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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM [REDACTED] 1924

No. [REDACTED] 181 ✓

CHARGE PIPE LINE CORPORATION, APPELLANT,

v.

JOY MONIER AND GEORGE M. HAGEE, CONSTITUTING
THE STATE TAX COMMISSION OF THE STATE OF MISSOURI,
AND JESSE W. BARRETT, ATTORNEY GENERAL
OF THE STATE OF MISSOURI

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF MISSOURI

FILED SEPTEMBER 25, 1924

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SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1923

No. 575

OZARK PIPE LINE CORPORATION, APPELLANT,

vs.

ROY MONIER AND GEORGE M. HAGEE, CONSTITUTING
THE STATE TAX COMMISSION OF THE STATE OF MISSOURI,
AND JESSE W. BARRETT, ATTORNEY GENERAL
OF THE STATE OF MISSOURI

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF MISSOURI

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[fol. b] [Endorsed:] No. 33. United States District Court, Central Division of the Western District of Missouri. The Ozark Pipe Line Co. vs. Roy Monier, George N. Hagee, and Jesse W. Barrett. Citation. Filed 29th day of May, 1923. Edwin R. Durham, Clerk. By F. J. Framman, D. C.

[fol. 1] Be it remembered, That on the 9th day of May, A. D. 1922, the same being in vacation time of the United States District Court for the Central Division of the Western District of Missouri, the following among other proceedings of the same day was had, made and entered of record, to-wit:

(33)

OZARK PIPE LINE CORPORATION, a Corporation, Plaintiff,
vs.

ROY MONIER AND GEORGE M. HAGEE, Constituting the State Tax Commission of the State of Missouri, and Jesse W. Barrett, Attorney General of the State of Missouri, Defendants

Now on this day comes the plaintiff by its attorneys and files its petition in the office of the Clerk of the United States District Court for the Central Division of the Western District of Missouri, at Jefferson City, Missouri.

And said petition, so filed as aforesaid, is in words and figures as follows, to-wit:

IN THE

**DISTRICT COURT OF THE UNITED STATES FOR THE
CENTRAL DIVISION OF THE WESTERN DISTRICT OF
MISSOURI**

[Title omitted]

BILL OF COMPLAINT—Filed May 9, 1922

Now comes the plaintiff, Ozark Pipe Line Corporation, and files this, its complaint against Roy Monier and George M. Hagee, con-[fol. 2] stituting the State Tax Commission of the State of Missouri, and Jesse W. Barrett, Attorney General of the State of Missouri, and complaining of said defendants, this plaintiff says:

Plaintiff is a corporation organized and existing under and by virtue of the laws of the State of Maryland.

Plaintiff states that the defendants, Roy Monier and George M. Hagee, are all of the members of the State Tax Commission of the

State of Missouri and that the defendant, Jesse W. Barrett, is the Attorney General of the State of Missouri.

Plaintiff further states that it owns and operates a pipe line for the transportation of crude petroleum from the State of Oklahoma to the town of Woodriver, in the State of Illinois; that the western terminus of said pipe line is at or near the town of Cushing, in the State of Oklahoma, and that the eastern terminus of said pipe line is at or near the town of Woodriver, in the State of Illinois, and that said pipe line extends from said town of Cushing in a Northeasterly direction across the State of Oklahoma to the Missouri border, and thence in a Northeasterly direction across the State of Missouri to the Mississippi River at a point a few miles North of the City of St. Louis and opposite the town of Woodriver, Illinois, and thence under the Mississippi River into the State of Illinois and to said town of Woodriver.

Plaintiff states that it is engaged solely in the business of operating said pipe line and certain gathering lines in the State of Oklahoma and is engaged solely in the business of conducting crude petroleum through said pipe line from the State of Oklahoma to the State of Illinois, and through and across the State of Missouri; [fol. 3] that it does no business within the State of Missouri; that it receives no consignments of oil within the State of Missouri, and delivers no consignments of oil within the State of Missouri, but transports all consignments of oil through the State of Missouri from Oklahoma to Illinois, and that it is engaged entirely in the business of interstate commerce and does no intra-state business within the State of Missouri.

Plaintiff states that since it began the operation of said pipe line it has been assessed for general property taxes upon that portion of its pipe line within the State of Missouri and upon other assets within the State of Missouri, and has paid said taxes for previous years and for the year 1921 to the State of Missouri and the various counties through which said pipe line passes.

Plaintiff further states that during the year 1921 it paid to the State of Missouri in addition to said general ad valorem, property taxes, the following, to-wit; A registration fee of Five Dollars (\$5.00) as required by the laws of Missouri, and a license fee of Three Thousand Seven Hundred Five Dollars (\$3,705.00) as hereinafter set out.

Plaintiff states that on the 9th day of January, 1920, it complied with the laws of the State of Missouri applicable to corporations for pecuniary profit formed in other states and desiring to be authorized or permitted to transact business in the State of Missouri, to-wit: with Section 9790 of the Revised Statutes 1919. That said Section provides as follows:

9790. "Every corporation for pecuniary profit formed in any other state, territory or country, before it shall be authorized or permitted to transact business in this State, or to continue business therein if already established, shall have and maintain a public office or place in this State for the transaction of its business where legal

service may be obtained upon it, and where proper books shall be kept to enable such corporation to comply with the constitutional and statutory provisions governing such corporations, and such corporation shall be subject to all the liabilities, restrictions and duties which are, or may be, imposed upon corporations of like character organized under the general laws of this State, and shall have no other or greater powers."

Plaintiff states that it also on said January 9, 1920, complied with the provisions of Section 9792 of the Revised Statutes of Missouri of 1919 which provides as follows:

9792. "Every company incorporated for the purpose of gain under the laws of any other state, territory or country, now or hereafter doing business within this State shall file in the office of the Secretary of State a copy of its Charter or Articles of Association, duly authenticated by the proper authority, together with a sworn statement under its corporate seal particularly setting forth the character of the business which it is engaged in carrying on, or which it proposes to carry on in this state; and the principal officer or agent in Missouri shall make and forward to the Secretary of State, with the affidavits required a statement sworn to of the proportion of the capital stock of said corporation which is represented by its property located and business transacted in Missouri, which statement shall set out the location of its principal office or place in this state for the transaction of its business where legal service may be obtained upon it. Such corporation shall be required to pay into the state treasury upon the proportion of its capital stock represented by its property and business in Missouri, incorporating tax and fees equal to those required of similar corporations formed within and under the laws of this State, with an addition of Ten Dollars (\$10.00) as a fee for issuing the license authorizing it to do business in this State. Upon compliance with these provisions by the corporation, the Secretary of State shall give a certificate that said corporation has duly complied with the law and is authorized to engage only in the business set out in the statement filed with its charter."

Plaintiff states that on said January 9, 1920, it had an authorized capital of Ten Million Four Hundred Thousand Dollars (\$10,400,000.00) and that it paid to the State of Missouri a license tax amounting to Two Thousand Six Hundred Ninety-six Dollars Fifty Cents (\$2,696.50) and obtained authority to employ the sum of Five Million Three Hundred Nineteen Thousand Two Hundred One Dollars Ninety-one Cents (\$5,319,201.91) of its capital within the State of Missouri, for which a license was duly issued to it on the 9th day of January, 1920, by the State of Missouri; and plaintiff states that thereafter it increased its authorized capital stock to Thirty Million Dollars (\$30,000,000.00) and on August 18, 1921, it filed with the Secretary of State of Missouri amended articles of incorporation showing said increase in its capital stock and paid a license tax of Three Thousand Seven Hundred Five Dollars (\$3,705.00) and obtained authority to employ Twelve Million Seven Hundred Twenty

Thousand Dollars (\$12,720,000.00) of its capital within the State of Missouri, for which a license was duly issued to it on August 18, 1921, by the State of Missouri.

Plaintiff states that it complied with said provisions for the reason that it desired to do an interstate business through and across the State of Missouri, and desired to exercise all of the rights, powers and privileges of pipe line companies incorporated under the laws of the State of Missouri, and among other things desired to have the privilege of eminent domain which is granted pipe line companies organized under the laws of the State of Missouri by Section 1791 of the Revised Statutes of 1919.

Plaintiff states that the Supreme Court of the State of Missouri in the case of Southern Illinois & Missouri Bridge Co. vs. Stone, 174 Mo. 1, has ruled that a foreign corporation complying with the provisions of the statutes of Missouri enabling it to transact business in the State of Missouri has the same rights and privileges, including the right of eminent domain, as is granted to similar corporations organized under the laws of the State of Missouri.

Plaintiff states that the license to transact business in Missouri as provided for by Section 9792 of said Revised Statutes of Missouri of 1919 is more than a mere license to do an intrastate business within said State, but is a valuable right conferred upon foreign corporations doing an interstate business within the State of Missouri which desire to exercise the right of eminent domain, to buy or condemn rights of way, and to own, operate and maintain public utilities within the State of Missouri and to exercise all powers granted to similar corporations of the State of Missouri by the Revised Statutes of said State.

Plaintiff states that it is a common carrier of crude petroleum, and is a public utility, and is so recognized by said Section 1791 of the Revised Statutes of Missouri of 1919 conferring upon pipe line companies the right of eminent domain.

Plaintiff further states that during the year 1921 there was upon the statute books of the State of Missouri, and apparently in force, a law providing for the payment to said state of an annual franchise tax by corporations; that said law was first passed on the 9th day of April, 1917, and is found in the Laws of Missouri of 1917, at page 237, that said law was subsequently amended on May 6, 1919, which amendment is found in the Laws of Missouri of 1919, page 237, and that said law as amended was published as a part of the Revised Statutes of Missouri 1919, Section- 9836 to 9848 inclusive, and that said Sections were subsequently amended on August 4, 1921, which said amendment is found in the Laws of Missouri, 1921, Extra Session, page 121.

[fol. 7] Plaintiff states that from January 1, 1921, to August 4, 1921, the said Sections 9836 to 9848 inclusive, of Revised Statutes of Missouri 1919, were in force and effect so far as they were valid and applicable, and that the defendants have attempted to and are attempting to enforce the provisions of said Articles of the Revised Statutes of 1919 against this plaintiff.

Plaintiff states that by Section 9836 aforesaid it is provided as follows:

9836. "Every corporation organized under the laws of this state shall, in addition to all other fees and taxes now required or paid, pay an annual franchise tax to the state of Missouri equal to one-tenth of one per cent of the par value of its outstanding capital stock and surplus, or if such corporation employs a part of its capital stock in business in another state or country, then such corporation shall pay an annual franchise tax equal to one-tenth of one per cent of its capital stock employed in this state, and for the purposes of this article such corporation shall be deemed to have employed in this state that proportion of its entire outstanding capital stock and surplus that its property and assets in this state bears to all its property and assets wherever located. Every corporation, not organized under the laws of this state, and engaged in business in this state, shall pay an annual franchise tax to the state of Missouri equal to one-tenth of one per cent of the par value of its capital stock and surplus employed in business in this state, and for the purposes of this article such corporation shall be deemed to have employed in this state that proportion of its entire capital stock and surplus that its property and assets in this state bears to all its property and assets wherever located: Provided, that this law shall not apply to corporations not organized for profit, nor to express companies, which now pay an annual tax on their gross receipts in this state, and insurance companies which pay an annual tax on their gross premium receipts in this state."

Plaintiff states that by Section 9837 aforesaid it is provided that every corporation liable to the tax prescribed shall make a report in writing to the Missouri State Tax Commission.

That by Section 9838 it is provided as follows:

[fol. 8] 9838. "The state tax commission, or the state board of equalization, as the case may be, shall, on or before the 20th day of February in each year determine from the facts reported, and from any facts within or coming to its knowledge the proportion of the capital stock and surplus of each corporation employed in business in this state and the amount of the tax each corporation is liable to pay under the provisions of this article and shall report the same to the state auditor, who shall make out a tax bill therefor against each corporation and shall deliver the same to the state treasurer and charge him therewith. The taxes provided for in this article shall be paid on or before the 15th day of April in each year and shall be due and payable to the state treasurer without notice, who shall make out and deliver a receipt therefor, which shall recite that the corporation named therein has paid its annual franchise tax under the provisions of this article for the year ending on the 31st day of the following December."

That by Sections 9842, 9843 and 9844 it is provided as follows:

9842. "The taxes and penalties to be paid by the provisions of this article shall be a first lien on all property and assets of the corporation within this state."

9843. "If any corporation fails or refuses to pay the taxes assessed against it under the provisions of this article on or before the first day of May the state treasurer shall certify a list of such corporations so delinquent to the attorney-general, who shall proceed forthwith to collect the same, together with a penalty of twenty-five per cent, and interest at the rate of one per cent per month. Suits for the collection of such taxes may be brought in the name of the state in any court of competent jurisdiction and any judgment rendered therein in favor of the state shall be a first lien on all the property and assets of the corporation within this state."

9844. "If any corporation subject to the provisions of this article shall fail or neglect to make the report herein required, or within the time herein required, such corporation, if organized under the laws of the state, shall forfeit its charter, or, if a foreign corporation, shall forfeit its right to engage in business in this state, and the attorney-general, or at his direction, the prosecuting attorney of the county in which such corporation has its principal business office, shall bring an action in the name of the state in some court of competent jurisdiction to annul the charter or revoke the license of such corporation to engage in business in this state."

Plaintiff states that during the year 1921 it did not make such report and that the defendant, Jesse W. Barrett, is threatening to cause an action to be brought in the name of the state against the plaintiff in some court of competent jurisdiction to revoke the license of the plaintiff obtained from the State of Missouri as aforesaid on the 9th day of January, 1920, and that the defendants, Roy Monier and George M. Hagee, constituting the State Tax Commission of the State of Missouri, are threatening to determine the amount of tax which, in their opinion, this plaintiff should have paid for the year 1921, and which would have been shown as due by such report, if any had been filed, prior to the 20th day of February, 1921, and to make out a tax bill therefor, and to deliver the same to Treasurer of the State in order that he may proceed to collect the same, together with a penalty of twenty-five per cent (25%) damages and interest at the rate of one per cent (1%) per month in accordance with the provisions of Section 9843.

Plaintiff states that the total par value of its outstanding capital stock and surplus prior to the increase of its capital stock as shown by the renewal of its license on August 18, 1921, as aforesaid, without deducting liabilities, amounted to Eight Million Nine Hundred Sixteen Thousand One Hundred Dollars (\$8,916,100.00), and that the total par value of its outstanding capital stock and surplus after said increase of capital stock amounted to Twenty-six Million Nine

Hundred Sixteen Thousand One Hundred Dollars (28,916,-
100.00).

That Section 9836 Revised Statutes of Missouri 1919, aforesaid, provides that the franchise tax upon foreign corporations in the state shall be

[fol.10] "Equal to one-tenth of one per cent of the par value of its capital stock and surplus employed in business in this state, and for the purposes of this article such corporation shall be deemed to have employed in this state that proportion of its entire outstanding capital stock and surplus that its property and assets in this state bears to all its property and assets wherever located."

Plaintiff states that the Supreme Court of the State of Missouri in the case of State ex rel. Marquette Hotel & Investment Company vs. State Tax Commission, et al., 221 S. W. Rep. 721, ruled that the word "surplus" as it occurs in this Act means the excess of gross assets over the outstanding capital stock without deducting debts or liabilities.

Plaintiff further states that approximately fifty-three per cent (53%) of its total assets consist of the assets located within the State of Missouri, and that if it is required to pay a franchise tax levied upon fifty-three per cent (53%) of its outstanding capital stock and surplus without deducting liabilities said tax would amount to approximately Four Thousand Seven Hundred Twenty-five Dollars Fifty-three Cents (\$4,725.53) for the year 1921, and approximately Seven Thousand One Hundred Thirty-two Dollars Seventy-four Cents (\$7,132.74) for subsequent years on account of the increase of its capital stock, as shown by its renewed license of August 18, 1921, and on account of the reduction in the rate of tax from one-tenth of one per cent to one-twentieth of one per cent by the amendment of August 4, 1921, Laws of Missouri of 1921 Extra Session, page 121.

Plaintiff states that it is not liable for the tax aforesaid, and is not required to make the report aforesaid for the following reasons, to-wit:

First. It is not engaged in business in the State of Missouri, and Section 9838 is applicable by its express provisions only to corporations organized under the laws of the State of Missouri, or to corporations not organized under the laws of said state and engaged in business in said state.

Second. Said statutes as applied to this plaintiff are unconstitutional in that they attempt to levy a tax upon interstate commerce and place a burden upon interstate commerce in contravention of the commerce clause of the Constitution of the United States, to-wit, Article 1, Section 8 thereof.

Plaintiff states that if the Tax Commission of the State of Missouri shall issue a tax bill as aforesaid against the plaintiff, that said tax bill would become a cloud upon the title of the plaintiff to its pipe line and right of way in the State of Missouri by virtue of

Section 9842 aforesaid, which declares that said taxes shall be a first lien on all of the property and assets of the corporation within the state, and that the cloud of said tax bill would seriously hinder the plaintiff in the transaction of its business and interfere with its credit.

Plaintiff further states that it has no adequate remedy at law to prevent the issuance of said tax bill and the clouding of its title as aforesaid, or to prevent the revocation of its license issued to it by the State of Missouri on the 9th day of January, 1920, as aforesaid, and re-issued on August 18, 1921, as aforesaid, and that a Court of Equity alone has the power by writ of injunction to prevent the issuance of said tax bill and the creation of said cloud upon its title, and to prevent the revocation of license of the plaintiff issued by the State of Missouri as aforesaid.

[fol. 12] Plaintiff further states that this is a controversy wholly between citizens of different states, to-wit, the plaintiff, a corporation organized and existing under the laws of the State of Maryland, and the defendants, who are citizens and residents of the State of Missouri, and that the amount in controversy exceeds the sum of Three Thousand Dollars (\$3,000.00) exclusive of interest and costs.

Wherefore, plaintiff prays that this Court enter its order, judgment and decree enjoining the defendants, Roy Monier and George M. Hagee, from undertaking to levy a tax as of the 20th day of February, 1921, under said Section 9838 against this plaintiff, and from issuing a tax bill therefor, and from delivering the same to the State Treasurer and enjoining the defendant, Jesse W. Barrett, Attorney General, from proceeding under Sections 9843 and 9844, and from bringing any action in the name of the state to revoke the license of this plaintiff issued by the State of Missouri on the 9th day of January, 1920, as aforesaid, and re-issued on the 18th day of August, 1921, as aforesaid, and from bringing any suit for the collection of the taxes for the said year of 1921.

Koerner, Fahey & Young, Attorneys for Plaintiff.

IN UNITED STATES DISTRICT COURT

SUBPOENA AND SERVICE

Whereupon on May 9th, 1922, a subpoena in chancery was issued to the United States Marshal for the Western District of Missouri, which was returned executed on May 16th, 1922, "by delivering a true copy of this writ to Roy Monier and George M. Hagee, constituting the State Tax Commission of the State of Missouri and Jesse W. Barrett, Attorney General of the State of Missouri all done in Cole County, Missouri, this 16th day of May, 1922.

(Signed) I. K. Parshall, U. S. Marshal Western District of Missouri, By A. B. Richter, Deputy M. Marshal's fees, \$6.00.

[fol. 13] And afterwards, to-wit, on June 3, 1922, the following proceedings were had in said cause, to-wit:

[Title omitted]

Now on this day come the defendants and file their answer to the bill of complaint herein.

And said answer so filed as aforesaid, is in words and figures as follows, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE CENTRAL DIVISION OF THE WESTERN DISTRICT OF MISSOURI

[Title omitted]

ANSWER—Filed June 3, 1922

The joint answer of Roy Monier and George M. Hagee, and Jesse W. Barrett, the above named defendants, to the bill of complaint of the Ozark Pipe Line Corporation, plaintiff.

In answer to the said bill of complaint, defendants admit that plaintiff is a corporation organized and existing under and by virtue of the laws of Maryland; admit that Roy Monier and George M. Hagee are all of the members constituting the State Tax Commission of the State of Missouri; admit that Jesse W. Barrett is the Attorney-General of the State of Missouri; admit that plaintiff owns and operates a pipe line for the transportation of crude petroleum from the State of Oklahoma to the town of Woodriver in the State of Illinois.

[fol. 14] Defendants neither admit nor deny that the western terminus of said pipe line is at or near the town of Cushing, in the State of Oklahoma and that the eastern terminus of said pipe line is at or near the town of Woodriver, in the State of Illinois, and call for proof as plaintiff may be advised; defendants neither admit nor deny that said pipe line extends from said town of Cushing in a north-easterly direction across the State of Oklahoma to the Missouri border, and call for proof as plaintiff may be advised; admit that said pipe line extends in a northeasterly direction across the State of Missouri to the Mississippi River at a point a few miles north of the City of St. Louis and opposite the town of Woodriver, Illinois, but neither admit nor deny that said pipe line extends thence under the Mississippi River into the State of Illinois and on to Woodriver, and call for proof as plaintiff may be advised.

Defendants neither admit nor deny that plaintiff is engaged solely in the business of operating said pipe line and certain gathering lines in the State of Oklahoma and is engaged solely in the business of conducting crude petroleum through said pipe lines from the State of Oklahoma to the State of Illinois and through and across the State of Missouri, and leave plaintiff to its proof.

Defendants deny that said plaintiff pipe line company does no business within the State of Missouri, but aver the fact to be that plaintiff is, and was at all times mentioned herein, engaged in business within this State; defendants neither admit nor deny that plaintiff receives no consignments of oil within the State of Missouri and delivers no consignments of oil within the State of Missouri, but [fol. 15] transports all consignments of oil through the State of Missouri from Oklahoma to Illinois, and that it is engaged entirely in the business of interstate commerce and does no intrastate business within the State of Missouri, and leave plaintiff to its proof.

Defendants neither admit nor deny that plaintiff has, since it began the operation of said pipe line, been assessed for general property taxes upon that portion of its pipe line within the State of Missouri and upon other assets within the State of Missouri, and has paid taxes for previous years and for the year 1921, to the State of Missouri, and the various counties through which said pipe line passes, but aver that should it be a fact that plaintiff has been so assessed and said property taxes as alleged in its bill, as aforesaid, yet this fact will and does not relieve nor justify plaintiff from making its report to the State Tax Commission of the State of Missouri and paying a Franchise Tax upon its capital stock and assets employed in business within Missouri as it is required to do in accordance with the terms of Sections 9836, 9837, 9838, 9842, 9843, 9844, 9846, 9847 and 9848 of the Revised Statutes of Missouri, 1919, and as amended by Laws of Missouri, 1921, (Extra Session) page 122.

Defendants admit the payment by plaintiff, during the year 1921, the sum of Five Dollars (\$5.00) to the State of Missouri as license fee as alleged in paragraph two (2), page three (3) of its bill of complaint.

Defendants admit that plaintiff did, on the 9th day of January 1920, comply with Section 9790 of the Revised Statutes of Missouri, 1919, authorizing it to transact business in the State of Missouri and that said section reads as recited on page four (4) of plaintiff's bill of complaint.

[fol. 16] Defendants admit that plaintiff did, on the 9th day of January, 1920, comply with Section 9792, of the Revised Statutes of Missouri, 1919, as alleged on page four of its bill of complaint and that said section reads as recited therein.

Defendants neither admit nor deny that plaintiff had, on January 9, 1920, an authorized capital of Ten Million, Four Hundred Thousand Dollars, (\$10,400,000.00) and that it paid to the State of Missouri a license tax of Two Thousand, Six Hundred Ninety-\$ Dollars and Fifty Cents. (\$2,696.50) and obtained authority to employ the sum of Five Billion, Three Hundred Nineteen Thousand Two Hundred One Dollars and Ninety-one Cents (\$5,319,201.91) of its capital within the State of Missouri, and leave plaintiff to proof; admit that a license was issued to plaintiff on January 1920, authorizing it to do business in Missouri.

Defendants neither admit nor deny that subsequent to January 1920, plaintiff increased its authorized capital stock to Thirty Million Dollars (\$30,000,000.00) and require proof as plaintiff may

advised; admit that on August 18, 1921 plaintiff filed with the Secretary of State of the State of Missouri, amended articles of incorporation purporting to show an increase in its capital stock as aforesaid; defendants neither admit nor deny that plaintiff paid to the State of Missouri a license tax of Three Thousand, Seven Hundred Five Dollars (\$3,705.00) and obtained authority to employ Twelve Million, Seven Hundred Twenty Thousand Dollars (\$12,720.00) of its capital within the State of Missouri, on said 18th day of August, 1921, and require proof as plaintiff may be advised; admit that a license to do business in Missouri was issued to plaintiff on the last above mentioned date.

[fol. 17] Defendants deny plaintiff's allegation at the bottom of page twelve (12) and top of page thirteen (13) of its bill of complaint that plaintiff is not liable for a franchise tax, as aforesaid, and aver that plaintiff is engaged in business in the State of Missouri and subject to all the provisions of the Corporation Franchise Tax Laws of the State of Missouri as contained in Sections 9836, 9838, 9843, and 9844 of the Revised Statutes of Missouri, 1919, referred to and set out in plaintiff's bill of complaint.

Defendants further deny that the aforesaid statutes as applied to this plaintiff are unconstitutional in that they attempt to levy a tax upon interstate commerce and thereby place a burden upon interstate commerce in contravention of the commerce clause in Article 1, Section 8, of the Constitution of the United States.

Further answering, defendants aver that plaintiff, in the course and conduct of its business in the State of Missouri, among other things, was and is engaged in transporting crude petroleum in Missouri; has been for a long time and is now maintaining and operating three oil pumping stations within this state; has long since established and is now maintaining its principal office and headquarters in Missouri, at which its stockholders' and directors' meetings are held, and the officers of the corporation have their offices and direct the affairs and activities of the corporation therefrom; make all contracts; declare, receive and pay dividends; keep its records and financial books and perform constantly divers and sundry other acts of business therein and therefrom within the State of Missouri.

Having thus made a full answer to all the matters and things contained in the bill these defendants pray that the bill be dismissed [fol. 18] and for judgment for their costs in this behalf incurred.

Roy Monier, George M. Hagee, Members of the State Tax Commission of Missouri. Jesse W. Barrett, Attorney General of Missouri, By J. Henry Caruthers, Special Assistant Attorney General of Missouri.

And afterwards, to-wit, on November 27, 1922, the following proceedings were had in said cause, to-wit:

[Title omitted]

Now on this day comes the plaintiff by its attorneys and files a reply memorandum to the answer of defendants.

And said reply so filed as aforesaid, is in words and figures as follows, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE CENTRAL DIVISION OF THE WESTERN DISTRICT OF MISSOURI

[Title omitted]

[fol. 19] REPLY MEMORANDUM FOR PLAINTIFF—Filed Nov. 27, 1922

We desire briefly to reply to some of the arguments contained in the memorandum prepared by learned counsel for the defendants. In that memorandum counsel comments on several decisions, and then says at page 6,

"Therefore, it is well settled that a foreign corporation engaged in interstate commerce may be taxed on the value of its property and assets owned and used or employed in business in Missouri."

Now this is perfectly true, but it is not the question presented here. The Ozark Pipe Line Corporation does pay a tax on all of its property in Missouri. Its right of way in Missouri is assessed for taxation and that tax is paid. In several cases cited by defendants the Court was confronted with a tax which was levied upon a right of way, or which was, though in form a license tax, actually assessed in lieu of a tax upon the right of way, for example, in *Postal Telegraph Cable Company v. Adams*, 155 U. S. 688, the syllabus reads,

"A State privilege tax of a certain amount per mile of wires operated within the state, imposed on all telegraph companies therein operating, in lieu of all other state, county and municipal taxes, and amounting to less than the ordinary ad valorem tax, is substantially a mere tax on property, to which a foreign corporation operating within the state is subject, notwithstanding it is engaged in interstate commerce," etc.

The distinction between a privilege or excise tax and a tax upon property is vital. The state can levy a tax upon all property within its borders whether that property is used in interstate commerce or not. If the property belongs to a railroad company and is constantly being moved about from one state to another so that it is [fol. 20] impossible for the state to ascertain how many cars of any given railroad company are *are* within the state on a certain day when the tax is in theory levied, the state may resort to other meth-

ods and tax the company on a mileage basis, or upon that proportion of its capital which the total mileage in Missouri bears to the total mileage everywhere. Whatever the form may be, if the tax is intended as a property tax it will be sustained provided, of course, it is fair and reasonable and is not so figured as to violate any fundamental property rights.

Here we are not concerned with this question at all. The state of Missouri, as stated above, does levy and collect a tax upon the right of way of the Ozark Pipe Line Corporation considered as property. The question here is, has it a right to levy a tax upon the privilege of doing the business which the Ozark Pipe Line Corporation does? Counsel cite at page 4 the following language:

"But property in a State belonging to a corporation, whether foreign or domestic, engaged in foreign or interstate commerce, may be taxed, or a tax may be imposed on the corporation on account of its property within a State, and may take the form of a tax for the privilege of exercising its franchises within the State, if the ascertainment of the amount is made dependent in fact on the value of its property situated within the State (the exaction therefore, not being susceptible of exceeding the sum which might be leviable directly thereon), and if payment be not made a condition precedent to the right to carry on the business, but its enforcement left to the ordinary means devised for the collection of taxes."

Now, it will be noticed that the Court says that in such a case the exaction is so levied that it cannot exceed the sum which might be levied directly, that is, the method of figuring the tax is such that the Company cannot suffer by reason of the fact that the tax is in the [fol. 21] form of a privilege tax instead of in the form of a direct tax upon the property. In other words, it is in substance and fact a direct ad valorem tax upon property, and as the Company in the case, as stated by the Court, paid no other direct ad valorem tax upon its property it could not complain on account of the form of the tax in question unless it could show that the result was a greater amount than that which would have been levied if the tax had been a direct ad valorem tax. The cases, therefore, which consider a tax levied in lieu of an ad valorem property tax are not in point.

Another line of cases cited deal with franchise taxes levied on account of intra-state business where a Company is engaged in both inter-state and intra-state business. In these cases the amount of the tax may be arrived at in different ways according to the various provisions of the statutes, but the cases are equally not in point for the reason that there is no effort here to levy a privilege tax upon a Company *an* account of any intra-state business for the plaintiff does no such business. For example counsel cite Hump Hair Pin Company vs. Emmerson at page 5 of their brief and quote as follows:

"As coming within this latter description, taxes have been so repeatedly sustained where the proceeds of interstate commerce have been used as one of the elements in the process of determining

the amount of a fund (not wholly derived from such commerce) to be assessed, that the principle of the cases so holding must be regarded as a settled exception to the general rule."

The clause in parentheses is, of course, the controlling clause. If the fund were wholly derived from interstate commerce it could not be taxed at all. The cases cited are simply concerned with the validity of various methods adopted by the states in ascertaining [fol. 22] the value of intra-state business as compared with total business where it is considered that the Company does an intra-state business and that such business is taxable, the only question being as to the propriety of the method adopted in taxing it. In the present case, however, there is nothing for the state to levy a privilege or excise tax on for there is no intra-state business done and the Company does not have to obtain from Missouri the privilege of doing an interstate business, nor can it be taxed by the State of Missouri on such business.

Counsel also cites numerous cases in various states in an attempt to show that the Ozark Pipe Line Corporation was doing business in Missouri. Now it is to be noticed that a Company might open an office in the State of Missouri either for the purpose of conducting a business interstate in charterer, or for the purpose of conducting some other sort of a business. If a Company is not engaged in interstate commerce at all, but opens an office in Missouri for the purpose of, let us say, soliciting life insurance, or for the purpose of maintaining, controlling or operating gold mines in Alaska, the State might levy a privilege tax upon the Company without coming in conflict with any federal provision in regard to interstate commerce. The tax may be valid, or it may be invalid, but if invalid it will not be because it is a tax upon interstate commerce. If, however, a Company opens an office in the State of Missouri for the purpose of conducting an interstate business only, the State of Missouri cannot levy a franchise tax upon it without conflicting with the provisions of the Federal Constitution protecting interstate commerce from such state taxation.

[fol. 23] It makes no difference whether a Company in maintaining an office within the state in such a sense that it can be served with process. A company which does nothing but an interstate business is, of course, subject to suit somewhere and it is no more than reasonable to say that it may be sued wherever it maintains an office for the transaction of business; whether the nature of the business be interstate or intra-state is not material. As a matter of course a Company may do business in a state although that business is interstate in character. In other words, all interstate business is business done within the borders of different states. We deem it unnecessary to review and undertake to distinguish the cases dealing with this question as to the validity of service. We believe there are sufficient decisions by the Courts of the United States to settle this controversy without reference to decisions from various state courts many of which deal with a wholly different sort of controversy and some of which we believe are erroneous when viewed in the light of the decisions of the Supreme Court of the United States.

The decision in the Case of Tidewater Pipe Company vs. State Board of Assessors, 57 N. J. 516, is, we submit, clearly based upon misapprehension of the effect of the decision in Maine vs. Grand Trunk Railway Company, 142 U. S. 217. The Grand Trunk Railroad Company was operating a railroad which was constructed by the Atlantic & St. Lawrence Railroad Company, which was a Maine Corporation. The statute of Maine provided,

"When a railroad lies partly within and partly without this state or is operated as a part of a line or system extending beyond a state, the tax shall be equal to the same proportion of the gross receipts in this State, as herein provided, and its amount determined [fol. 24] as follows * * * and the gross receipts in this state shall be taken to be the average gross receipts per mile, multiplied by the number of miles operated within the State."

It is thus obvious that the Company was doing business within the State of Maine, that it was operating under a Charter granted by the State of Maine, and the only question before the Court was as to the method of ascertaining the just amount of a franchise tax upon the Company on account of its business in Maine. The Courts says,

"The tax for the collection of which this action is brought is an excise tax upon the defendant corporation for the privilege of exercising its franchises within the State of Maine."

Clearly, therefore, the case is not authority for the proposition that a state may levy a franchise tax upon the privilege of doing an interstate business merely because the business is done through or across the state.

Counsel also call attention to the broad powers of the Ozark Pipe Line Corporation as conferred by its Charter. The question here, however, is not what powers the Company has under its Charter, but what sort of business does it actually do.

Conclusion

The present tax is a privilege or excise tax: it has been so declared by the Supreme Court of the State of Missouri in the case cited in our former brief. It is clearly not a general property tax for several reasons:

First. The state already collects a general property tax from the Company.

Second. A general property tax is based upon an appraisal, it must provide for a hearing and an assessment ad valorem.

[fol. 25] It is true that general property taxes are sometimes levied upon intangible property, rights of way, franchises of street railway companies, and others, but the tax in question here is not of that

sort. It is clearly a privilege tax and it is clearly levied upon the privilege of doing an interstate business through and across the State of Missouri.

The tax in question, therefore, we submit, is clearly one which it is beyond the power of the State of Missouri to levy.

All of which is respectfully submitted.

Koerner, Fahey & Young, Attorneys for Plaintiff.

IN UNITED STATES DISTRICT COURT

ORDER CONTINUING CAUSE

And afterwards, to-wit, on Monday, October 16, 1922, the same being the 1st day of the regular October, 1922, Term of said court, the following proceedings were had in said cause, to-wit:

[Title omitted]

Now on this day come the parties by their respective counsel and the cause coming on for hearing and the evidence heard and not having been concluded, it is ordered that further proceeding herein be continued.

And afterwards, to-wit, on Tuesday October 17, 1922, the same being the 2nd day of the regular October, 1922, Term of said court, [fol. 26] the further proceedings were had in said cause, to-wit:

[Title omitted]

Now on this day come again the parties by their solicitors, when evidence is further heard and the cause argued by counsel and submitted, and by the Court taken under advisement.

The abstract of the evidence is in words and figures as follows; to-wit:

IN THE UNITED STATES DISTRICT COURT, CENTRAL DIVISION, WESTERN DISTRICT OF MISSOURI

[Title omitted]

Abstract of the Evidence Prepared by Plaintiff

Said cause was called for trial before the Honorable Arba S. Van Valkenburgh, Judge, on the 16th day of October, A. D. 1922, and the following proceedings were had.

It was admitted that the plaintiff is a corporation organized under the laws of Maryland; that Roy Monier and George M. Hagee are all of the members of the State Tax Commission of the State of

Missouri; that Jesse W. Barrett is the Attorney General of the State of Missouri, and they are all of them residents and citizens of the [fol. 27] State of Missouri.

Plaintiff sustained the issues on its part by introducing evidence as follows, to-wit:

CARL BARKER, being called as witness for the plaintiff testified in substance as follows:

I am tax commissioner for the Ozark Pipe Line Corporation. I have here a blue print showing the line of the Ozark Pipe. Said blue print was marked "Exhibit A" and offered in evidence. The Southwestern terminus of the line is near Waurika, Oklahoma. It is at the place marked Burkton, Oklahoma. The line extends from Burkton through the State of Oklahoma and through the City of Cushing and up through the town of Verdi, and crosses the Missouri-Oklahoma border as shown on the map. Shellton, Roxdale and Yarma shown on the map are the names of our pumping stations. The line is a ten inch pipe line from Cushing to Woodriver, Illinois. The Northeastern terminus is near the City of Woodriver, Illinois. The pipe line goes under the Mississippi River and over to Woodriver.

The nature of the Company's business is that it transports crude petroleum by pipe line. It receives the crude petroleum at points in the State of Oklahoma and delivers it to Woodriver. It receives no shipment of oil in the State of Missouri. It makes no deliveries in the State of Missouri. Approximately fifty per cent (50%) of the property and assets of the Company lie within the State of Missouri, that is, pipe lines, rights of way and pumping stations, and physical assets. The Ozark Pipe Line Corporation is a common carrier. It receives shipment from any one that tenders them. It has rates on file with the Interstate Commerce Commission and complies with the orders of the Interstate Commerce Commission. The rates that are charged are the rates approved by the Interstate Commerce Commission in all cases. The Company does no other business except the transportation of crude petroleum by pipe line.

[fol. 28] The Company has offices in the State of Oklahoma and Missouri and Maryland. The stockholders' meetings are held in the State of Maryland. Meetings of Board of Directors are held wherever they get a quorum or necessity demands. The Directors reside partially in Missouri and partially in New York. There was a time when the majority of the directors resided in New York State. I think the meetings were held in New York at that time. I don't recall any meetings in Missouri then.

The Company pays general property taxes to the State of Missouri, general ad valorem taxes on its right of way and real estate and personal property. Witness here produced an original certificate issued by the Department of State of the State of Missouri to the Company, marked "Exhibit B," which authorized an increase of the

capital stock of the Company. Witness continued: The Company originally qualified to do business in Missouri for \$5,319,201.90 and paid a license fee of \$2,696.50, and then on August 18, 1921, there was a further tax of \$3,705.00 when the Company qualified for an increase of capital stock. The Company has paid property taxes assessed against it in the State of Missouri right along, ad valorem taxes. Witness was here asked as to the efforts of the defendants to enforce the collection of a franchise tax. There was some discussion by counsel and court which showed that the Tax Commission was threatening to issue a tax bill which would become a lien upon the property; that it forwarded the name of the Company to the prosecuting officers of St. Louis for such action as might be necessary or advisable under the state statute for the purpose of either forfeiting the right of the Company to do business in Missouri or across Missouri, and in that stage of the proceedings the Company got the Commission to postpone action until this suit could be filed. [fol. 29] By the Court: I suppose it is not denied it is the purpose of the officers of the government to insist on this tax, to enforce it by all methods prescribed.

By Mr. Caruthers: No, sir. Your Honor, the state officials act—the officials undertake—in the first place, we undertook to have them report to the State Tax Commission as the statute requires. They failed to do that. Then we took it up with the prosecuting attorney of St. Louis and he took it up—

By the Court: Well that makes sufficient case for relief if they are entitled to it.

By Mr. Caruthers: I take it it does, Your Honor.

Counsel for plaintiff here offered in evidence Article 23, Section 88-G of the Laws of Maryland of 1920, effective June 1, 1920. Objection raised by counsel for defendants when counsel for plaintiff stated that the purpose was to show that the Company paid a franchise tax in the State of Maryland.

Witness continued: The amount of the tax in Missouri which is in controversy here for the year 1921 amounts to \$4,725.53, and to approximately \$7,132.74 for subsequent years.

Counsel for plaintiff here called the court's attention to the act under which this tax is levied as set out in the petition, stating that the court would take judicial notice of the act.

Witness continued: There are three pumping stations shown on the blue print, "Exhibit A," in Missouri. At Shellton, Roxdale and Yarma. The purpose of those stations is to boost the oil through the line.

Cross-examination:

Q. Where is the principal office of the Company?

A. That depends on what you call the principal office. The home [fol. 30] office is in Maryland. It is a statutory office. I have never been in the office and do not know how many rooms they have there.

Q. What sort of management or officers occupy that office?

A. The Agent for the corporation in that state. I am not familiar with his duties. I don't know of anything he has to do with the management of this corporation. I have been with the corporation since its organization, in the latter part of 1919, I believe. I am personally acquainted with this Agent who occupies the office in Maryland. I haven't the least idea about the extent of that office, whether it is one room or desk room in somebody else's office. I couldn't say whether this Agent corresponds with our office in St. Louis. He has never corresponded with my particular office. As to whether he corresponded with the other offices I couldn't say.

Q. As a matter of fact he is kept there for the purpose of service in compliance with the statute?

A. I am not familiar with his duties at all.

Q. Then you don't know much about that office in Maryland, do you?

A. No, sir. We have three or four rooms in our office in St. Louis located in the Arcade Building. We have a telephone; don't know from personal knowledge whether the number is in the directory, I think it is, I have never looked it up. I know the Company's number, it is Olive 7240. We are called there by that number by various people from various points. President of the Company is in charge, Mr. F. Godber. The other officials are the Secretary, P. R. Chenoweth, Treasurer, T. F. Lydon, and Vice-President, T. F. Lydon, and Vice President, Mr. van der Woude; that is, five officers. The Secretary is in charge of the records and books of [fol. 31] accounts. He has them in his office in the Arcade Building, St. Louis. He keeps and has in charge the stock certificate books of the Company; they are in the office in St. Louis, Missouri. I suppose any stock sold by that Company is issued from that office and a record is made thereof. Don't know from my personal knowledge about the transfer of the stock. The Secretary handles that exclusively; he keeps the stock certificate books and records. The Treasurer, naturally, I would suppose, has custody of the finance or cash of the Company. That would be my impression from the operation of the Company. The corporation maintains accounts of deposit in St. Louis. Wages are paid for St. Louis employees out of the office at St. Louis. They consist of clerical employees in the office, stenographers and clerks and bookkeepers; there are some three or four stenographers; the Company has some six or eight employees in the St. Louis office in addition to the officers. I am one of the employees. They all receive their pay at that office. I suppose the Company pays rent for the offices, it doesn't own the building. I don't know who owns it.

As to the office in Oklahoma, they have four or five rooms in a frame building, one story. It is an office building. There are no other offices in it. It is a permanent building, built on our own property. The Superintendent of operations has his office there and other employees incident to that office. I should judge there are ten or twelve employees in that office. I am not familiar with their duties. There is the Superintendent of operations, his assistants,

the master mechanic and the station employees, chief engineer, gaugers, etc. I am not familiar with just what business is carried on in the different offices. My business don't bring me in touch with that. I do not know whether the directors have any meetings [fol. 32] down there or keep any books of account, or make contracts and execute them there.

Q. In St. Louis, is that the point where the contracts are made and executed and the business directed from that point?

A. That is where the officers are. The officers maintain their offices there and carry on their duties at offices.

Q. Is the business of the Company directed from your St. Louis office; what I mean by business, the main business, the execution of the business, the transportation of petroleum?

A. I don't know about that—all I know is that the officers have their offices there. As to who directs it, or what you would call business of directing it—I don't know what you call directing the business.

I don't know whether the officers in Maryland and Oklahoma report to the St. Louis office the business they do. I am tax commissioner. That leads me to a knowledge of part of the operation of this business. We have bookkeepers in St. Louis; they keep accounts and, I suppose, the books.

It requires attention to maintain the line across the state. Repairs have to be made if anything breaks. We have occasional breaks in the line. The method of repair would depend upon the nature of the break. We send men out there to do the work. They repair the break or damage according to different methods. If the line is underground they have to remove that. I don't know where the material is gotten from that they do repairing with. I would imagine they wouldn't keep it very far distant. The line is made of ten inch steel pipe. It comes from various pipe factories outside of Missouri. We maintain track walkers or line walkers going over that line daily. One man walks it alone, takes a section. The number of miles he covers varies according to our experience in that section. The oil [fol. 33] stations are used to boost the oil through the line. The capacity of the pipe line depends on the number of stations and the distance between them. The power you put on at those stations to make or increase the amount of oil you can deliver. You must have stations along at various points. These stations build up the pressure on the line and boost it through. They are not storage tanks in any sense of the word.

Q. What is the capacity of your three stations separately?

A. The stations don't have any capacity. It is approximately eighty (80) miles between stations. The station is a building with pumps and engines in it. There is what we call a flow tank there. The oil flows in this tank and is pumped out of it.

Q. Does it immediately go through this or stored until such time as you need it to furnish additional pressure, or to lower the pressure? Is it taken out to lower?

A. They have to have a slight variance, you can't make one

set of pumps pump exactly what the other pumps bring in. I am not a mechanical engineer, that is hard for me to answer, I don't know from actual knowledge.

The first station after entering Missouri is in Newton County, Shellton. We have a 37,500 barrel tank there, steel tank. I don't think the oil ever remains there. My idea of the purpose of that tank is in case we had a break beyond or East of Shellton we would have some place to switch the oil until they could shut it off at the next station beyond.

Q. You don't mean by that you don't use the tank to put oil in unless there is a break?

A. I don't know whether they do or not, but, I say, that is my idea for the reason in building the tank.

[fol. 34] The pumps at Shellton are operated by engineers. I don't know how many. I have seen them. Some stations I have seen only once, some a dozen times. There are three pumps at Shellton. They run all night; I don't know what shifts of men are used. I don't know from what office the men are paid. The tank at each station is the same capacity, 37,500 barrels; same number of pumps, the same identical station except as to arrangements. We have three stations like that in Missouri. We own no real estate in St. Louis.

Q. Do you own any other real estate in Missouri aside from this pipe line?

A. The station sites. We own none disconnected from the pipe line. We own automobiles and trucks used in Missouri. Don't know the kinds and extent. Mostly Fords I know that.

We have some trucks; use them for hauling men and, I suppose, freight and material. I am fairly sure that these trucks and automobiles are maintained, that is the mechanical requirements are maintained, in Missouri and the material. Don't know how many automobiles we have. We make property returns to the various counties; they vary. I would judge there were six or eight cars and trucks altogether, not all Fords. I don't think they are expensive, big trucks; the character of the work wouldn't demand a heavy truck. They haul men and material. I know of no other property outside of the pipe line proper and automobiles in Missouri—office equipment, that is, furniture.

If damage occurs as a result of a break in line we send a claim agent out and he arrives at a settlement with the property owner if possible. We have had cases in court growing out of breaks. I don't have knowledge of any cases except in the Federal Court—yes we had a case in Springfield in the State Court in Greene [fol. 35] County. They brought the suit in the State Court. It is pending in the State Supreme Court.

We do not transport our own oil. The oil is tendered to us as a common carrier for shipment. We have regular patrons. We ship for them under tariff so much a barrel. I am not familiar with how the oil is tendered. It is tendered at points in Oklahoma. The Company has a General Manager. I don't know how they divide the management of the Company, I mean in St. Louis. They are

the ones with whom these matters are taken up, whether by contract, or letter, or otherwise, according to my understanding. They take it and handle it in accordance with whatever arrangement is made there under tariffs prescribed. The General Manager is in St. Louis.

Q. And they, I suppose, after the fashion of any common carrier, all of which are required to file and establish their rates, I suppose the business of this is handled in much the same manner as it is to the solicitation of business or acceptance of business and the arrangements of the details and the terms and all that sort of things?

A. Under the rules of the Interstate Commerce Commission.

The office in St. Louis, where the General Manager and officers are, is the location of the headquarters where that is done.

Plaintiff here offered in evidence plaintiff's "Exhibit C," which is a certified copy of the original certificate issued by the Secretary of State of the State of Missouri to the Company dated January 9, 1910.

ROBERT BASCOM, a witness called by the plaintiff, testified as follows:

I am General Manager of the Ozark Pipe Line Corporation. I re [fol. 36] side in St. Louis, Missouri.

Referring to "Exhibit A," the pumping stations at Shellton, Roxdale and Yarma consist each of a pumping station building which houses the pumping units. There are three 12,000 barrel pumps directly connected to the engine which operates them. Only two of the pumps and engines are operated at one time, giving the line a capacity of 24,000 barrels per twenty-four hours. The other buildings consist of an auxiliary building which houses auxiliary equipment, that is steam heating equipment, four plant electric generators, etc., to be used in the operation of the pumping station; cottages for the employees, and one 37,500 barrel tank and a smaller tank of 1,000 barrel capacity, known as a flow tank, and there is miscellaneous pipe and connections, water supply, sewer system, and that sort of thing used in connection with the use of the houses and the operation of the station. There are three pumps at each station and we never use more than two at the same time.

I can express the capacity of one of those pumps in barrel displacement. The pump cylinders fill and discharge enough times in twenty-four hours to pump twelve thousand barrels per pump into the line. The oil comes in the pipe line from Cushing. When it reaches Shellton it flows directly to the pumps and is pumped on through the lines to the next station. The effect of the pumps is to increase the pressure from Shellton on; that is the only purpose, to add pressure to the oil in order to move it through the line. The purpose of the 1,000 barrel flow tank is this: It is impossible to synchronize all of your pumping stations so that each station will handle the amount of the station behind it and the 1,000 barrel tank does what we call "ride on the suction line" that is, if the station, [fol. 37] for instance at Shellton, pumps less than comes in from

the station behind it the oil will rise in the flow tank. If Shellton station pumps more oil than it receives back the oil will go down in the flow tank. That flow tank is used primarily to put the stations "in step" to take care of the little differences of operations between two stations and to give the dispatchers an idea of what the stations are doing so they can more accurately control the pumping. I can express it this way. If the station behind Shellton, that is at Verdi, is pumping more oil than the station at Shellton the difference will go into the flow tank. On the other hand, if the station at Shellton is pumping more oil than that at Verdi the difference is taken out of the flow tank. As the two pumping stations vary the height of the oil varies in the flow tank. The flow tank is directly connected with the pipe line at all times.

The 37,500 barrel tank is used solely in case of an emergency. If the line breaks ahead of the pumping station, or anything happens to a pumping station, we find it advisable not to shut the line down in its entirety. If the line breaks we cannot deliver crude, but from an operating standpoint you want to keep the stream in motion because particularly in the winter time, the oil becomes very viscous and cold and it is almost impossible if you once shut it down to start it again, so we keep as much of the oil in operation as possible by cutting the stream into the 37,500 barrel tank. That is, if there should be a break in the line beyond Shellton so we couldn't operate the pumping station at Shellton and pump beyond that, the oil coming in from Verdi would be shunted off into the 37,500 barrel tank until we could get the pipe line fixed and the same is true of Roxdale and Yarma.

Q. And then after the pipe line is repaired would you connect the 37,500 barrel tank with the pipe line?

A. Well, the 37,500 barrel tank is at all times connected with the pipe line but is normally shut off by use of a valve in the line, and when we want to run the oil out of the tank, the Shellton station, [fol. 38] for instance, would be put on, would be started pumping at a higher rate than that at which the oil is coming into the station, the difference would then be drawn from the 37,500 barrel tank.

I do not know where stockholders' meetings are held. The office building in Oklahoma is located at what is known as transit station, that is about two miles South of the town of Cushing. The office is very close to the point marked "Goldsby" on Exhibit A. The line walkers are stationed along the line. They have regular homes and patrol the line both ways from that location. For instance, a man might live at Shellton station in the dormitory at that point and patrol the line, say for thirty miles East from Shellton, or he might live with a farmer along the line and patrol the line from that point on. They get their instructions from Cushing, Oklahoma. The inspectors who ride in the Ford automobiles that Mr. Baker testified about very frequently operate both in Oklahoma and Missouri across the state line. The time of employees is kept in the Cushing office and is sent to St. Louis, where the checks are prepared and the checks are mailed back to Cushing, from which point they are distributed.

The arrangements for the transportation of oil with shippers have been made wherever the business was available. I mean by that, if a shipper in Toledo or New York desires to make arrangements to ship his crude, our representatives go to see him and arrange the details; sometimes they are made in St. Louis, sometimes they are made in other places. Mr. Airey, one of the directors of the Company, resides in New York City. He has at times made contracts with shippers. He made the arrangements with the Standard Oil Company of New Jersey for the transportation of about 2,100,000 barrels of crude. [fol. 39] We have not made any contracts in their entirety at Bartlesville, Oklahoma. We have arranged part of the details of one shipment in Bartlesville with the Empire Refining Company. No contracts or details of arrangements are made in Cushing. Some are made at Tulsa.

Q. Now if a man has, say 100,000 barrels of oil, he wants to ship it, we will say it is at some point along the line from Cushing to Healdton, what is the method of going about delivering that oil to you?

A. We make a connection to our tanks or tanks to which we may be connected, or we will lay the connection between our tanks and his.

He either writes a letter, or comes to see us, or we go to see him, or he calls us up over the telephone and asks what the condition of the traffic through our line is so he can find out whether he can get his crude promptly, or whether there will be a delay in the transportation.

We do not give a bill of lading; we give what is known as a run ticket, which is a receipt for the crude received. The giving of those run tickets is fixed by the act to regulate interstate commerce, which provides that the shipper shall either give a receipt or a run ticket, a receipt or a bill of lading. Those receipts are made out and given to the shipper at Cushing. The shipper will find out by telephone or in some way the condition of the line and our ability to handle it. When he gets our answer it can be handled on a certain date and time he makes a tender along the line and gets a receipt for it. He gets a receipt as he delivers it. If he gives us 5,000 barrels one time we give him receipt for such amount. If he gives us 10,000 barrels the next day we receipt him for 10,000. He does not get any written contract from us in St. Louis at all.

[fol. 40] The automobiles and trucks used at the stations are for the purpose of hauling supplies from the towns, from the nearest railroad point, to the station and used somewhat in the maintenance of the line. Other trucks are used entirely in the maintenance of the line, to haul the men from the town where they have to live out to the pipe line along the right of way where they do the maintenance work. The Company never handles any oil delivered to it in Missouri. It never makes deliveries in Missouri. Its business is confined entirely to the transportation of oil from what is known as the Mid-continent field in Oklahoma up to Woodriver, Illinois.

Cross-examination:

I am General Manager of the Ozark Pipe Line Corporation. I am not a stockholder or director.

The revenue is collected at St. Louis. We keep the books of account in St. Louis of all the transportation we do. The books of record, such as stock certificates and records of stockholders' meetings and things of that sort, are kept by the Secretary's office and I have no knowledge of whether the books are kept in St. Louis or not. The Secretary's office is in the Arcade Building at St. Louis. I have never seen the stock certificate records there, but I know he keeps those records there.

Pipe line, pumping stations, automobiles, telephone and telegraph lines are the only things which we have in the State of Missouri. We transmit telegrams over this telephone line, both telephone and telegraph. It is maintained along the right of way. We employ men to run the trucks.

Q. And you purchase supplies and material to maintain your trucks, locally, do you not?

[fol 41] A. Well, sometimes, for emergency repairs purchases are made locally. We keep at Cushing a supply of such things as tires and other miscellaneous repair parts which frequently wear out, and in that case there is no local purchase made but a requisition is sent to the Cushing office for the material and supplies from the warehouse at that point.

Q. Mechanical work required on the trucks and automobiles, where is that done, locally?

A. Sometimes when the work is of such a character it can be done by our mechanics, otherwise it is sent to a garage at the nearest town, or sent into Oklahoma to some garage with which we have arrangements to do our work.

I do not say that we send trucks and automobiles from up here in Northeast Missouri and East Missouri to Oklahoma to have them repaired. We maintain trucks and automobiles in Central and Eastern Missouri as well as in Oklahoma. The supplies are secured and repairs made wherever it is most convenient. If it is in a town or close to one, they are sent to the local garage. However, generally the repair parts come from the dealers in St. Louis, from the agencies. We do not purchase gasoline and cylinder oil and things of that sort locally. We contract and it is shipped from different distributing agencies from the people from whom we buy the gasoline and lubricating oils. We do send our cars to local garages and have them repaired there if it is convenient. It depends on the character of the work our trucks do—while in general they stay in the same division of the pipe line. If a truck has to be overhauled we send out a truck to replace it and send the crippled truck to a garage. Now that may be in Oklahoma or Missouri, it entirely depends on the condition of the truck, whether it can be driven, or whether the repairs need to [fol. 42] be made immediately, or whether they can wait; it depends on the circumstances entirely. It does not depend on the nearness

to the Oklahoma line necessarily. If the truck is in such condition it can be operated; I don't mean it necessarily has to go into Oklahoma, we might send it to St. Louis or over to Illinois. We have no fixed practice, it is a matter of convenience.

The line walkers and repair men do not live at the stations. The pay checks are made in the St. Louis office upon time sheets kept in Cushing.

Q. And all the pay checks are made out of St. Louis and distributed from St. Louis?

A. Yes, sir.

Telephone or telegraph poles are purchased through the St. Louis office. I don't think they come from Missouri. We use what is known as Northern White Cedar, it grows up around the Lakes and Wisconsin.

I am not acquainted with the requirements of the Maryland franchise tax law. I don't know anything about what the Company does with reference to payment of franchise tax in Maryland. I think we hold record meetings in the St. Louis office if it is convenient: I have seen all the directors there. I don't know from my own personal knowledge or perusal of the records. I don't know whether they hold more meetings there than at any other point. I don't know who the directors are—what officers are directors, I couldn't tell you. I know who the President is, he lives in St. Louis. There are three Vice-Presidents, I believe, two in St. Louis and one in New York. Those that live in St. Louis maintain their office there in the Arcade Building. The Secretary and Treasurer maintains his office there.

[fol. 43] Examination by the court:

We have never exercised the right of eminent domain in Missouri.

Q. Do you regard it as probable or possible that you may have to and desire to exercise that right?

A. Yes, Sir; I do, sir.

Q. Now how would that be occasioned, what would be the reason or necessity of that?

A. Well, our pipe line at present occupies a particular place in the State of Missouri. Now if we should desire for any reason to change the location of a part of that line we might experience considerable difficulty in accomplishing that without the right of eminent domain. In other words, we would be entirely at the mercy of the property owners on either side of it.

Q. You might want to construct laterals or something of that sort?

A. Well, suppose an accident should happen to our line, or they should open up part of the country in subdivisions, put us in a public road at a point we didn't want to occupy and we would then be desirous of moving our line from that location to a location which we would consider safe.

Q. And for that reason you desire to keep alive your right to exercise it if you wish to?

A. Yes, sir.



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Q. You, I understand, are the General Manager of the Company?

A. Yes, sir.

Q. And as such you have general supervision and direction of the affairs of the Company wherever its business is located and wherever its property is located?

[fol. 44] A. Let's qualify that, let's say operate—the policy of the Company and things of that sort are controlled by the officers.

Q. And Board of Directors, but under that policy, so far as the administrative and executive part of it is concerned, you are the one that carries that out and directs it?

A. Yes, sir.

Q. If there is any arrangement to be made for the handling of the product in any considerable amount and all that sort of thing, you are the one who directs that, approves it or passes upon it?

A. Yes, sir.

Mr. CARL BAKER, recalled, further testimony in behalf of the plaintiff as follows:

The present Directors of the Company are Mr. F. Godber, St. Louis, Mr. T. F. Lydon, St. Louis, Mr. R. G. A. van der Woude, St. Louis, and Mr. Richard Airey of New York City. There are none in Maryland.

Plaintiff here offered in evidence plaintiff's Exhibit D, being a copy of the Articles of Association of the Ozark Pipe Line Corporation.

Here plaintiff rested its case.

The defendants thereupon offered the following testimony:

Defendants here offered defendant's Exhibit 1, being the application of the Company for permission to do business in Missouri.

Defendants here offered in evidence defendants' Exhibit 2, being a copy of plaintiff's application for permission to do business after an increase in capital stock.

Defendants here rested their case.

[fol. 45] IN UNITED STATES DISTRICT COURT

ORDER APPROVING ABSTRACT

Upon filing the Exhibits referred to by the Assistant Attorney General, this abstract is approved this 30th day of June, 1923.

Arba S. Van Valkenburgh, Judge.

(Here follows Plaintiff's Exhibit A, marked side folio page 46.)

[fol. 47]

EVIDENCE: PLAINTIFF'S EXHIBIT B

State of Missouri, Department of State

Whereas, on the eighteenth day of August, Nineteen Hundred and 21 there was filed in the office of the Secretary of State, as required by law, a duly certified copy of the statement of the proceedings of a meeting held for the purpose of increasing the capital stock of Ozark Pipe Line Corporation, a corporation organized under the laws of the State of Maryland and licensed under the laws of the State of Missouri, on the 9th day of January 1920 and said corporation having in all things, complied with the law made and provided for the increase of capital stock and increased its capital stock from Five Million Three Hundred Nineteen Thousand Two Hundred and One and 90/100 Dollars to Twelve Million Seven Hundred Twenty Thousand Dollars,

Now, therefore, I, Charles U. Becker, Secretary of State of the State of Missouri, in virtue and by authority of law, do hereby certify that the capital stock in Missouri of said corporation is increased and that the amount of the capital stock in Missouri of said Ozark Pipe Line Corporation is Twelve Million Seven Hundred Twenty Thousand Dollars.

[fol. 48] In testimony whereof, I hereunto set my hand and affix the great seal of the State of Missouri. Done at the City of Jefferson, this 18 day of August, A. D., Nineteen Hundred and Twenty One.

Charles U. Becker, Secretary of State. C. E. Stephens, Chief Clerk. (Seal.)

[File endorsement omitted.]

[fol. 49]

EVIDENCE: PLAINTIFF'S EXHIBIT C

No. 3430

The State of Missouri

Certificate and License

Whereas, Ozark Pipe Line Corporation incorporated under the laws of the State of Maryland has filed in the office of the Secretary of State, duly authenticated evidence of its incorporation, as provided by law, and has, in all respects, complied with the requirements of law governing Foreign Private Corporations;

Now therefore, I, John L. Sullivan, Secretary of State of the State of Missouri, in virtue and by authority of law, do hereby certify that said Ozark Pipe Line Corporation is from the date hereof duly authorized and licensed to engage in the State of Missouri, exclu-

sively in the business of transporting crude petroleum by pipe line which is authorized by its charter for a term ending October 7th 1969, and is entitled to all the rights and privileges granted to Foreign Corporations under the laws of this State; that the amount of the capital stock of said corporation is Ten Million Four Hundred Thousand Dollars, and the amount of said capital stock represented by its property located and business transacted in the State of Missouri [fol. 50] is Five Million Three Hundred Nineteen Thousand Two Hundred One and Ninety One Hundredths Dollars, and that its public office for the transaction of business in Missouri, is located at St. Louis.

In testimony whereof, I hereunto set my hand and cause to be affixed the great seal of the State of Missouri. Done at the City of Jefferson, this 9th day of January, A. D. Nineteen Hundred and Twenty.

John L. Sullivan, Secretary of State. (Seal.)

[fol. 51] EVIDENCE: PLAINTIFF'S EXHIBIT D

Ozark Pipe Line Corporation

Incorporated under the Laws of the State of Maryland

Certificate of Incorporation as Filed October 7, 1919, and Amended
23rd day of October, 1920

[fol. 52] Certificate of Incorporation of "Ozark Pipe Line Corporation"

This is to certify:

A. That we, the subscribers hereto, James Piper, Francis J. Carey, and D. List Warner, all of whom reside in the City of Baltimore and State of Maryland, and whose postoffice address is 607 Calvert Building, 101 East Fayette Street, Baltimore, Maryland, and all of whom are of full legal age, do hereby associate ourselves together with the intention of forming a corporation under and by virtue of the General Laws of the State of Maryland, authorizing the formation of corporations.

B. That the name of the proposed corporation is Ozark Pipe Line Corporation.

C. That the purpose for which the corporation is formed and the business or objects to be carried on and promoted by it are as follows:

(1) To engage in and carry on the business of constructing, purchasing, leasing or otherwise acquiring, and holding, owning, improving, developing, managing, maintaining, controlling, operating, mortgaging, creating liens upon, selling, conveying, or otherwise

disposing of pipe lines, transmission lines and any and all other [fol. 53] means of carriage and transportation located entirely outside of the State of Maryland, together with pumping stations, terminals, storage plants, and all other appurtenances incidental to the transportation as a private or a public service of petroleum, mineral oil, natural gas, coal and other oils, minerals and mineral and hydro carbon substances of every kind and all kinds of products and by-products derived from said substances or any of them.

(2) To engage in and carry on the business of constructing, purchasing, leasing or otherwise acquiring and holding and owning or improving, developing, managing, maintaining, controlling, operating, mortgaging, creating liens upon, selling, conveying, or otherwise disposing of telegraph and telephone lines, located entirely outside the State of Maryland, with all rights, privileges, franchises appertaining thereto.

(3) To engage in, and carry on the business of drilling, boring and exploring for, mining, extracting, producing, refining, distilling, treating, manufacturing, piping, dealing in, buying, and selling petroleum, mineral oils, natural gas, coal and other oils, minerals and mineral and hydro carbon substances of every kind and all kinds of products and by-products derived from said substances or any of them and all implements, materials and things incidental to or useful in connection with any of the businesses of the corporation and generally all kinds of goods, wares and merchandise of every nature whatsoever and of transporting and transmitting the same in any manner whatsoever and to engage in and carry on any other business [fol. 54] which may conveniently be conducted in conjunction with any of the businesses aforesaid.

(4) To purchase, lease, hire, otherwise acquire, hold, own, develop, improve and dispose of, and to aid and subscribe for the acquisition, development or improvement of real and personal property and rights and privileges therein, suitable or convenient for any of the businesses of the corporation and to acquire, take, hold, own, construct, erect, improve, manage and operate, and to aid and subscribe for the acquisition, construction, or improvement of oil wells, gas wells, mines, refineries, manufacturing plants, pipe lines, tanks, ears, piers, wharfs, steam and other vessels for water transportation and any other works, property or appliances which may appertain to or be useful in the conduct of any of the businesses of the corporation.

(5) To apply for, obtain, purchase or otherwise acquire any patents, copyrights, licenses, trademarks, tradenames, rights, processes, formulas, and the like which may seem capable of being used for any of the purposes of the corporation, and to use, exercise, develop, grant liens in respect of, sell, and otherwise turn to account the same.

(6) To engage in any manufacturing, mining, construction, transportation, storage, or other business connected with any of the purposes herein stated.

(7) To borrow or raise monies for any of the purposes of the corporation, issue bonds, debentures, notes or other obligations of any nature, and in any manner permitted by law, for money so borrowed or in payment for property purchases, and to secure the payment [fol. 55] thereof and of the interest thereon, by mortgaging upon, or pledge, or conveyance, or assignment, in trust of, the whole or any part of the property of the corporation, real or personal, including contract rights, whether at the time owned or thereafter acquired; and to sell, pledge, discount, or otherwise dispose of such bonds, notes or other obligations, of the corporation for its corporate purposes.

(8) To acquire by purchase, subscription or otherwise, and to hold, sell, assign, transfer, exchange, lease, mortgage, pledge, or otherwise dispose of any shares of the capital stock of, or voting trust certificates for, any shares of the capital stock or any bonds, or other securities or evidences of indebtedness, issued or created by any other corporation or association organized under the laws of the State of Maryland or of any other State, Territory, District, Colony or Dependency of the United States of America, or of any foreign country, and to issue in exchange therefor shares of capital stock, bonds, or other obligations of this corporation in the manner permitted by law and while the owner or holder of any such shares of capital stock voting trust certificates, bonds or other obligations, to possess and exercise in respect thereof, any and all the rights, powers and privileges of individual holders including the right to vote on any shares of stock so held or owned and upon a distribution of the assets and a division of the profits of this corporation, to distribute any such shares of the capital stock voting trust certificates, bonds or other obligations, or the proceeds thereof among the stockholders of this corporation.

[fol. 56] (9) To aid in any manner, any corporation or association, any bonds of other securities or evidence of indebtedness of which or shares of stock in which are held by or for this corporation or in which or in the welfare of which this corporation shall have any interest and to do any act or things designed to protect, preserve, improve or enhance the value of any such bonds, or other securities of indebtedness or such shares of stock or any other property of this corporation.

(10) To guarantee the payment of dividends upon any shares of the capital stock of, or the performance of any contract by any other corporation or association in which this corporation has an interest and to endorse and otherwise guarantee the payment of the principal and interest or either of any bonds, debentures, notes, securities or other evidences of indebtedness, created or issued by any such other corporation or association.

(11) To carry out all or any of the foregoing objects as principal, factor, agent, contractor, or otherwise, either alone or through, or in conjunction with any person, firm, association or corporation, and in any part of the world; and in carrying on its business and for the

purpose of attaining or furthering any of its objects and purposes to make and perform any contracts, and to do any acts or things and to exercise any powers suitable, convenient or proper for the accomplishment of any of the purposes herein enumerated, or incidental to the powers herein specified, or which at any time may appear conducive to or expedient for the accomplishment of any of [fol. 57] such purposes, if not inconsistent with the laws of the State of Maryland.

(12) Except as herein otherwise specifically provided to carry out all or any part of the aforesaid purposes and to conduct its business in all or any of its branches, in any or all States, Territories, Districts, Colonies and Dependencies of the United States of America, and in foreign countries, and to acquire (by purchase, exchange, lease, hire, or otherwise) own, hold, develop, operate, sell, assign, transfer, exchange, mortgage, pledge, or otherwise dispose of, or turn to account and convey real and personal property, and rights and privileges therein and to maintain offices and agencies in any or all States, Territories, Districts, Colonies and Dependencies of the United States of America and in foreign countries.

It is the intention that the objects and purposes specified in the foregoing clauses of this Article C shall not, unless otherwise specified herein, be in anywise limited or restricted by reference to or inference from, terms of any other clause of this or any other article of this Certificate, but that the objects and purposes specified in each of the clauses of this Article shall be regarded as independent objects and purposes.

It is also the intention that said clauses be construed both purposes and powers; and generally that the corporation shall be authorized to exercise and enjoy all other powers, rights, and privileges granted to or conferred upon corporations of this character by the laws of the State of Maryland, and the enumeration of certain powers as herein specified is not intended as exclusive of or as a waiver of [fol. 58] any of the powers, rights or privileges granted or conferred by the laws of such state, nor or hereafter in force; provided, however, that the corporation shall not have the power to carry on, and it is hereby prohibited from carrying on, the business of constructing, maintaining, and/or operating properties, lines, and/or works, and/or transacting any other business whatsoever within the State of Maryland, the constructing, maintenance, operation, and/or transaction of which would disentitle it to be classified as an ordinary business corporation under the laws of Maryland; nor shall it carry on in any State, Territory, District or Country, any business, or exercise any powers, which a corporation organized under the laws of said State, Territory, District, or Country, could not carry on or exercise, except to the extent permitted or authorized by the laws of such State, Territory, District or Country.

D. That the postoffice address of the place at which the principal office of the corporation in the State of Maryland, will be located in Calvert Building, 101 East Fayette Street, Baltimore, Maryland;

that the name and postoffice address of the resident agent is J. Bannister Hall, Jr., Calvert Buliding, 101 East Fayette Street, Baltimore, Maryland, and that said resident agent is a citizen of the State of Maryland and actually resides therein.

(E) That the total amount of capital stock of the proposed corporation is Ten Million Four Hundred Thousand Dollars (\$10,400,000.00), consisting of One Hundred Thousand (100,000) shares of preferred stock of the par value of One Hundred Dollars (\$100.00) [fol. 59] each. The amount of the total authorized preferred stock being Ten Million Dollars (\$10,000,000.00) and Two Hundred Thousand Shares (200,000) common stock of the par value of Two Dollars (\$2.00), the amount of the total authorized stock being four hundred thousand dollars.

The following description of the preferred stock and the common stock, with the terms of which the respective classes of stock are created and of the designations, preferences, voting powers, restrictions and qualifications of each of said classes of stock:

(1) Out of the surplus of the corporation or the net profits arising from its business, the holders of preferred stock shall be entitled to receive dividends at the rate of, but not exceeding, seven per centum per annum, payable semi-annually on the first day of April, and the first day of October in each year, from October 1st, 1919, or if so determined by the Board of Directors and expressed in the Certificates therefor from the first day of April, or the first day of October, next preceding the date of issue, unless such stock shall be issued on one of said dates and in such case from the date of issue before any dividends shall be declared or paid upon or set apart for the common stock; and such dividends shall be cumulative so that if in any dividend period full dividends upon the outstanding preferred stock at the rate of seven per cent per annum shall not have been paid, the deficiency shall be paid before any dividends shall be declared or paid upon or set apart for the common stock.

(2) Out of any surplus of the corporation or net profits arising from its business, remaining after full cumulative dividends, as afore [fol. 60] said, upon the preferred stock shall have been paid for, all past semi-annual dividend periods and full dividends upon the preferred stock for the current semi-annual dividend period shall have been declared and paid and set apart for payment, then and not otherwise dividends may be declared upon the common stock, and in the event of the declaration of any such dividends the holders of the common stock shall be entitled to the exclusion of the holders of the preferred stock to share ratably therein.

(3) The corporation may at its option from time to time on any semi-annual dividend payment date redeem the whole or any part of the preferred stock at the par value thereof, plus dividends accrued or in arrears. Each redemption of preferred stock shall be upon not less than thirty days' notice given in such manner as shall

from time to time be provided in the by-laws of the corporation, or be determined by resolution of the Board of Directors, and such redemption shall be in such amount and at such time and place, and by such method whether by lot or pro rata, as shall from time to time be provided by the by-laws of the corporation, or be determined by resolution of the Board of Directors. From and after the date fixed for any such notice as the date of redemption unless default shall be made by the corporation in the payment of the redemption price in pursuance of such notice, all dividends on the preferred stock thereby called for redemption shall cease to accrue and all rights of the holders thereof as stockholders of the corporation except the right to receive the redemption price shall cease and determine.

[fol. 61] (4) Preferred stock shall be preferred as to both earnings and assets and in the event of any liquidation or dissolution or winding up of the corporation, the holders of the preferred stock shall be entitled before any distribution of the assets shall be made to the holders of the common stock to receive the par amount of their respective holdings of preferred stock, together with all dividends accrued or in arrears thereon; and the holders of the common stock shall be entitled to the exclusion of the holders of preferred stock to share ratably in all the assets of the corporation then remaining. In case of reduction of the capital stock of the corporation, the whole of the preferred stock shall be redeemed as hereinbefore provided, before any distribution of assets theretofore capitalized shall be capitalized shall be made to the holders of the common stock. If, upon any such liquidation, dissolution or winding up of the corporation, or reduction of its capital stock, the assets thus distributable among the holders of the preferred stock shall be insufficient to permit the payment of the preferred stockholders of the preferential amount aforesaid, then the entire assets of the corporation to be distributed shall be distributed ratably among the holders of the preferred stock. The terms "dividends accrued or in arrears," and "full cumulative dividends," whenever used in this certificate with reference to preferred stock, shall be deemed to mean that amount which shall be equal to seven per cent per annum upon the par value thereof from October 1st, 1919, (or in case of stock dividends on which are expressed to be payable from another date from the date so expressed) to the date of distribution or the date fixed for redemption, as the case may be, [fol. 62] less the aggregate amount of all dividends which shall have been paid upon said stock prior to the date of such distribution or redemption.

(5) Except as may be otherwise required by the laws of the State of Maryland and as hereinafter in this certificate otherwise provided, the holders of common stock shall exclusively possess voting power for the election of directors and for all other purposes and the holders of the preferred stock shall have no voting power whatsoever; provided that in case the corporation shall be in default in the payment of any four successive semi-annual dividends upon the preferred stock, then, and in every such case, so long as there shall be any arrears of dividends upon the preferred stock, the holders of preferred

stock shall exclusively possess voting power for the election of directors and for all other purposes, and the holders of the common stock shall have no voting power for the election of directors and for all other purposes, and the holders of the common stock shall have no voting power. If, however, subsequent to any such failure in respect to the declaration and payment of four successive semi-annual dividends on the preferred stock all such accrued installments and arrears of dividends shall be paid by the corporation at any time, then and thereupon all power of the holders of the preferred stock to vote for the election of directors and for all other purposes shall cease; subject, however, to be again revived whenever the corporation shall be in default in the payment of four successive semi-annual dividends upon the preferred stock. At all times each holder of stock of the corporation of any class which shall at the [fol. 63] time possessed voting power on any matter, shall be entitled to one vote on such matter for each share of stock of such class then standing in his name on the books of the corporation.

F. That the corporation shall have three Directors. The names of those who shall act as directors until the first annual meeting or until their successors are duly chosen and qualified are: Avery D. Andrew, W. V. Waterschoot, van der Graécht, and Richard Airey.

G. The following provisions are hereby adopted for the purposes of defining, limiting and regulating the powers of the corporation, and of the directors and stockholders:

(1) The Board of Directors shall have power from time to time to fix and determine and to vary the amount of working capital of the corporation; to determine whether any and if any, what part of the surplus of the corporation or of the net profits arising from its business, shall be declared in dividends and paid to the stockholders, subject, however, to the provisions of this certificate; and to direct and determine the use and disposition of any of such surplus or net profits. The Board of Directors in its discretion, — use and apply, any of such surplus or net profits in purchasing or acquiring any of the shares of the capital stock of the corporation, if thereunto authorized in the manner provided by law, or any of its bonds or other evidences of indebtedness to such extent and in such manner and upon such terms as the Board of Directors deem expedient; and the shares of such capital stock so purchased or acquired may be resold unless [fol. 64] such shares shall have been retired for the purpose of decreasing the capital stock of the corporation to the extent authorized by law.

(2) The Board of Directors shall have power, if authorized by the stockholders or by the by-laws by a resolution passed by a majority of the whole Board, to designate two or more of their number to constitute an executive committee, and to delegate said committee any or all of the power of the Board of Directors in the management of the business and affairs of the corporation, including the power to authorize the seal of the corporation to be affixed to all papers which may require it.

(3) Unless otherwise provided by the by-laws of the corporation the Directors of the Corporation need not be stockholders therein.

(4) Unless otherwise provided by statute or provided by the by-laws of the corporation, notice of the time and place of any annual or special meeting of the stockholders of the corporation shall be sufficiently given if a written or printed notice thereof shall, at least twenty days before the date on which such meeting is to be held, be given to each holder of record of stock of the corporation entitled to vote at such meeting by leaving the same with him or at his residence or usual place of business, or by mailing it postage prepaid, and addressed to him at his address as it appears upon the books of the corporation, and no publication of any such notice shall be necessary.

[fol. 65] (5) The corporation may from time to time in the manner permitted by law, issue and sell any of the shares of its capital stock to the amount authorized by this certificate, or in case of any increase in the amount of the authorized capital stock of the corporation, then to the amount authorized by such increase and of any class which may at the time be authorized for such consideration or considerations in money or in property as from time to time may be affixed by the corporation, and the consideration so fixed for any shares of any class having a par value may be either greater or less than their par value. No holders of stock of the corporation of whatever class shall have any preferential rights of subscription to any shares of any class so issued or sold or to any obligations convertible into stock of the corporation, nor any right of subscription to any thereof other than such, if any, as the Board of Directors in its discretion may determine, and such price (which may be greater or less than the par value thereof of any) as the Board of Directors in its discretion may fix; and any shares or convertible obligations which the Board of Directors may determine may offer for subscription to the holders of stock, may, as said Beard may determine, be offered to holders of any class or classes of stock at the time existing to the exclusion of holders of any or all other classes at the time existing.

(6) Subject to the laws of Maryland, the corporation may at any time, if authorized by vote of the holders of two-thirds in amount of each class of stock at the time outstanding, given at a meeting of the stockholders called for the purpose, sell, lease or exchange all [fol. 66] of its property and assets for such consideration or considerations, whether in money or in property (including stocks, bonds or other evidences of indebtedness) of any other corporation or association organized under the laws of the State of Maryland, or of any other State, Territory or Country, as may be authorized by such vote.

(7) All certificates for shares of the capital stock of the corporation which shall be issued by it shall contain a reference to and be subject to all of the terms, conditions and limitations, of the certificate of incorporation and by-laws of the corporation. The holders

of any such shares, by accepting any such certificates, either before or after the purchase, by the corporation of any property and the transfer thereof to the corporation or the execution and delivery of any contract, shall conclusively be deemed and held to have consented to such purchase and transfer *or* such contract and to have agreed that all shares of the capital stock of the corporation issued in payment for such transfer of property or such contract shall be or where, when issued, fully paid by such transfer or the execution and delivery of such contracts and not liable to any further call or *sentence* whatsoever; provided, however, that all requirements of the laws of the State of Maryland, in reference to the issuance of said shares of stock shall have been complied with.

(8) No contract or other transaction between this corporation and any other corporation, and no act of this corporation shall in any way be affected or invalidated, by the fact that any of the directors of [fol. 67] this corporation are pecuniarily or otherwise interested in or are directors or officers of such other corporation; any director, individually, or any firm of which director may be a member, may be a party to or may be pecuniarily or otherwis interested in any contract or transaction of this corporation, provided that the fact that he or such firm is so interested shall be disclosed or shall have been known to the Board of Directors or a majority thereof; and any director of this corporation, who is also a director or officer of such other corporation, or who is so interested, may be counted in determining the existence of a quorum at any meeting of the Board of Directors of this corporation, which shall authorize any such contract or transaction and may vote thereat to authorize any such contract or transaction with like force and effect as if he were not such director or officer of such other corporation or not so interested.

In witnessee whereof, we have hereunto set out hands this 7th day of October, 1919.

James Piper, Francis J. Carey, D. List Warner. In the presencee of: Emma L. Burke.

[fol. 68] STATE OF MARYLAND,
City of Baltimore, ss:

Before the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City, personally appeared James Piper, Francis J. Carey and D. List Warner, and they did severally acknowledge the foregoing certificate to be their respective acts.

Witness my hand and Notarial Seal this 7th day of October, 1919.

Emma L. Burke, Notary Public. (Notarial Seal.)

Charter of "Ozark Pipe Line Corporation." Approved as in conformity with law and received for record by the State Tax Commission on the 7th day of October, 1919, 2:45 P. M., and recorded in Liber No. 18, Folio 51, etc., one of the Charter Records of the Commission.

Oscar Leser, William W. Beek.

It is hereby Certified, That the within instrument is a true copy, as received, approved and recorded by the State Tax Commission of Maryland.

As Witness my hand and the seal of the said Commission at Baltimore this 23rd day of May, 1922.

C. C. Wallace, Secretary. (Seal State Tax Commission of Maryland.)

[fol. 69]

Ozark Pipe Line Corporation

Articles of Amendment

This is to certify:

First. That the Board of Directors of the "Ozark Pipe Line Corporation," a Maryland Corporation having its principal office in the City of Baltimore, Maryland, at a meeting duly called and held on October 23rd, 1920, adopted the following resolution:

Resolved, (1) That it is advisable to amend the charter of the corporation by striking out the first paragraph, Section "E," of the Certificate of Incorporation, and inserting in lieu thereof the following:

"E." That the total amount of the capital stock of the corporation is Thirty Million Dollars (\$30,000,000.00), consisting of One Hundred Thousand (100,000) shares of preferred stock of the par value of One Hundred Dollars (\$100.00) each, the amount of the total authorized preferred stock being Ten Million Dollars (\$10,000.00), and Two Hundred Thousand (200,000) shares of common stock of the par value of One Hundred Dollars (\$100.00) each, the amount of the total authorized common stock being Twenty Million Dollars (\$20,000,000.00).

(2) That a meeting of the stockholders of the corporation to take action upon the adoption of the amendment advised, as aforesaid, be and the same is hereby called to convene at Baltimore, Maryland, on November 15th, 1920, at 10:00 A. M., or such earlier date as the stockholders of the corporation may fix by consent and waiver [fol. 70] of notice signed by all of the stockholders, and that the secretary of this corporation be and he hereby is instructed to give notice of said meeting as prescribed by the laws of Maryland, unless such notice shall be waived in writing by all the stockholders of this corporation.

Second. That the meeting of the stockholders of the corporation, called by the Board of Directors of the corporation, as aforesaid, was held on October 26th, 1920, pursuant to written waiver of notice, duly given and filed with the records of the corporation, and at said meeting the stockholders, by the affirmative vote of two thirds (2/3) of the shares of each class of stock outstanding and entitled

to vote, duly adopted the amendment of the charter of the corporation advised by the Board of Directors, as aforesaid.

Third. (a) That the amount of stock heretofore authorized is Ten Million Four Hundred Thousand Dollars (\$10,400,000.00), of which Ten Million Dollars (\$10,000,000.00) or One Hundred Thousand shares (100,000) of the par value of One Hundred Dollars (\$100.00) each, is preferred stock and Four Hundred Thousand Dollars (\$400,000.00), or Two Hundred Thousand Shares (200,000) of the par value of Two Dollars (\$2.00) each, is common stock, and that Eighty-five Thousand One Hundred Sixty-one shares (85,161) of the preferred stock and Two Hundred Thousand shares (200,000) of the common stock are outstanding.

(b) That the amount of additional stock hereby authorized is One Hundred Ninety-six Thousand (196,000) shares of common stock of the par value of One Hundred Dollars \$100.00) each, [fol. 71] aggregating Nineteen Million Six Hundred Thousand Dollars (\$19,600,000.00).

(c) That the preferences, voting powers, restrictions and qualifications of the authorized preferred stock and of the newly authorized common stock are at set forth in the charter in respect of the preferred stock and the common stock heretofore authorized.

In witness whereof, The "Ozark Pipe Line Corporation" has caused these presents to be signed in its name by its President and its corporate seal heretofore affixed and attested by its Secretary, on October 26th, 1920.

Ozark Pipe Line Corporation, By W. Van Waterschoot, v. d. Gracht, President. Attested: T. F. Lydon, Secretary.
(Corporate Seal.)

[fol. 72] STATE OF MISSOURI,
City of St. Louis, ss:

This is to certify that on October 26th, 1920, before me, the subscriber, a Notary Public of the State of Missouri, in and for the City of St. Louis, aforesaid, personally appeared W. V. Waterschoot, v. d. Gratch, who for the Ozark Pipe Line Corporation, a body corporate, and in its name and on its behalf did as President of said corporation acknowledge the foregoing instrument to be his act and an amendment to its Certificate of Incorporation.

In Witness Whereof, I have hereunto set my hand and Notarial Seal on the day and date last above written.

My commission expires August 25th, 1922.

Wm. F. Fahey, Notary Public. (Notarial Seal.)

[fol. 73] STATE OF MARYLAND,
City of Baltimore, ss:

This is to certify, That on the 28th day of October, 1920, before me, the subscriber, a Notary Public of the State of Maryland, in

and for the City of Baltimore, aforesaid, personally appeared D. List Warner, who being first duly sworn, made oath as follows:

That he was Secretary of the meeting of stockholders of the corporation at which the amendment of the charter of the corporation set forth in said Articles of Amendment was adopted, and that the matters and facts set forth in said Articles of Amendment are true.

Witness by hand and Notarial Seal the day and year last above written.

My Commission expires May —, 1922.

Cora E. Schotta, Notary Public. (Notarial Seal.)

Articles of Amendment of "Ozark Pipe Line Corporation." Approved by the State Tax Commission of Maryland, October 28th, 1920, as in conformity with law and order recorded.

Oscar Leser, Wm. W. Beck, Commissioners.

It is hereby certified, that the within instrument is a true copy as received, approved and recorded by the State Tax Commission of Maryland.

As witness my hand and the seal of said Commission at Baltimore this 22nd day of May, 1922.

C. C. Wallace, Secretary. (Seal State Tax Commission, Maryland.)

[fol. 74]

EVIDENCE: PLAINTIFF'S EXHIBIT 1

Copy

STATE OF MISSOURI,
City of St. Louis, ss:

T. F. Lydon, principal officer in Missouri of the Ozark Pipe Line Corporation, a corporation duly incorporated under the laws of the State of Maryland on the 7th day of October 1919, for a term of perpetual existence, being duly sworn, on his oath, states that he represents said corporation as its principle agent in the State of Missouri; that the amount of the capital stock of said corporation is \$10,400,000.00 and the proportion of the capital stock of said corporation which is represented by its property located and business transacted in the State of Missouri is \$5,319,201.90. Capital stock employed in Missouri is represented by property, an itemized description of which, with cash value thereof, is as follows:

One, 10 inch steel pipe line, together with telegraph and telephone line and other property used in connection with the transportation of crude oil, which said pipe line extends from Missouri, Oklahoma State line through the State of Missouri to a point on the Mississippi River in St. Louis County, North of the City of St. Louis, Missouri, \$5,319,201.90.

That the principal office of said corporation or place of transaction of its business in the State of Missouri where legal service may be obtained upon it, is located on the 4th floor of the Arcade Building, 8th and Olive Sts., St. Louis, Missouri.

(Signed) T. F. Lydon.

Subscribed and sworn to before me this 5th day of January, 1920. My commission expires June 7th, 1923. Carl Barker, Notary Public. (Seal.)

[fol. 75] EVIDENCE: DEFENDANTS' EXHIBIT 2

Affidavit of Assistant Secretary of the Ozark Pipe Line Corporation in Connection with Filing Amendment Showing Increase in Capital Stock of said Corporation in Missouri

P. R. Chenoweth, being duly sworn, on his oath, states that he is Assistant Secretary of the Ozark Pipe Line Corporation a Maryland corporation, and that he is Assistant to T. F. Lydon, principal officer of said corporation in the State of Missouri and that the per cent of property and business of said Ozark Pipe Line corporation in the State of Missouri is Forty-two and Four-tenths Per Cent (42.4); that the present total authorized capital stock of said corporation is \$30,000,000.00; that the amount of property and business of said corporation in the State of Missouri is \$12,720,000.00, that said corporation has previously qualified in the State of Missouri for \$5,319,201.91, and that \$7,400,798.09; in addition thereto is now represented in the State of Missouri. Further affiant sayeth not.

P. R. Chenoweth, Affiant.

Subscribed and sworn to before me this 17th day of August 1921. Chas. Alderson, Notary Public. My commission expires Sept. 8th, 1923.

[fol. 76] And afterwards, to-wit, on March 12, 1923, the following proceedings were had in said cause, to-wit:

[Title omitted]

Now on this day is filed the Memorandum on Final Hearing by the Court.

Said Memorandum on Final Hearing is in words and figures as follows, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE CENTRAL
DIVISION OF THE WESTERN DISTRICT OF MISSOURI

[Title omitted]

MEMORANDUM ON FINAL HEARING—Filed March 12, 1923

The method of computation adopted for the ascertainment of that amount of the capital of a foreign corporation doing business both within and without the state subject to the payment of an excise tax for the privilege of doing business within the state is well established. Further, there can be no doubt that interstate commerce is subject to regulation exclusively by Congress, and the state cannot tax or otherwise directly regulate or burden such commerce. (State of Missouri ex rel. Barrett, Attorney General, et al., vs. Kansas Natural Gas Company, 282 Fed. 341, and cases cited.) The only question then is whether the plaintiff corporation is doing such a local business [fol. 77] within this state as to render it subject to the excise tax, the levy of which it seeks to enjoin, and the burdens and penalties resulting from which it seeks to avoid.

Among the purposes for which the corporation was formed and the business or objects to be carried on and promoted by it, as set forth in its articles of association, are the following:

"To engage in and carry on the business of constructing, purchasing, leasing, or otherwise acquiring, and holding, owning, improving, developing, managing, maintaining, controlling, operating, mortgaging, creating liens upon, selling, conveying, or otherwise disposing of pipe lines, transmission lines, and any and all other means of carriage and transportation located entirely outside the State of Maryland, together with pumping stations, terminals, storage plants and all other appurtenances, incidental to the transportation, as a private or a public service, of petroleum, mineral oils, natural gas, coal and other oils, minerals and mineral and hydro-carbon substances of every kind, and all kinds of products and by-products derived from said substances or any of them.

"To engage in and carry on the business of constructing, purchasing, leasing or otherwise acquiring and holding, owning, improving, developing, managing, maintaining, controlling, operating, mortgaging, creating liens upon, selling, conveying or otherwise disposing of telegraph and telephone lines located entirely outside the State of Maryland, with all rights, privileges and franchises appertaining thereto.

"To purchase, lease, hire or otherwise acquire, hold, own, develop, improve and dispose of, and to aid and subscribe toward the acquisition, development or improvement of real and personal property and rights and privileges therein, suitable or convenient for any of the business of the corporation, and to acquire, take, hold, own, construct, erect, improve, manage and operate, and to aid and subscribe toward the acquisition, construction or improvement of oil

wells, gas wells, mine refineries, manufacturing plants, pipe lines, tanks, cars, piers, wharves, steam and other vessels for water transportation and any other works, property or appliances which may appertain to or be useful in the conduct of any of the business of the corporation.

"To borrow or raise moneys for any of the purposes of the corporation, issue bonds, debentures, notes or other obligations of any [fol. 78] nature, and in any manner permitted by law, for moneys so borrowed or in payment for property purchased, and to secure the payment thereof and of the interest thereon, by mortgage upon, or pledge or conveyance or assignment in trust of, the whole or any part of the property of the corporation, real or personal, including contract rights, whether at the time owned or thereafter acquired; and to sell, pledge, discount or otherwise dispose of such bonds, notes or other obligations of the corporation for its corporate purposes.

"To carry out all or any part of the foregoing objects as principal, factor, agent, contractor, or otherwise, either alone or through or in conjunction with any person, firm, association or corporation, and in any part of the world; and, in carrying on its business and for the purpose of attaining or furthering any of its objects and purposes, to make and perform any contracts and to do any acts and things, and to exercise any powers suitable, convenient or proper for the accomplishment of any of the purposes herein enumerated or incidental to the powers herein specified, or which at any time may appear conducive to or expedient for the accomplishment of any of such purposes, if not inconsistent with the laws of the State of Maryland."

In paragraph twelve it is thus expressly provided:

"It is the intention that the objects and purposes specified in the foregoing clauses of this Article C, shall not, unless otherwise specified herein, be in anywise limited or restricted by reference to, or inference from the terms of any other clause of this or any other article in this certificate, but that the objects and purposes specified in each of the clauses of this Article shall be regarded as independent objects and purposes."

Judged then by the construction placed upon its business and purposes by complainant itself in its own organic law, it has engaged, and is now engaging, in the various kinds of business enumerated in some or all of the sections above quoted. It seeks to avoid the effect of this situation by the contention that its business really consists only in the transportation of oil in interstate commerce, and that all its activities in this state, to which reference has been made, are mere incidents of its interstate commerce and essential to its trans- [fol. 79] action in that commerce.

The Attorney General in his brief fairly recites the nature of the business transacted by complainant in this state. For the sake of brevity I quote the language of the brief upon this point:

"The plaintiff maintains its principal office in Missouri, in the City of St. Louis, where it keeps its stock certificate books, books of account, financial reports, bank accounts, pays all the employees both within and without the state, purchases supplies within the state, employs labor within the state, maintains and operates telephone and telegraph lines and purchases supplies and equipment therefor in this state, acquires rights-of-way both by purchase and condemnation under its right of eminent domain granted to it by the state. It is constantly entering into and executing contracts for the transportation of crude oil, and of employment and purchases and has frequent damage cases by reason of broken and leaking pipelines which result in overflowing and damaging the lands adjacent thereto. Settlements and adjustments of such damages are affected both in and out of the courts of this state. Material and labor are assembled at the broken points and repairs made.

"The vice-president, secretary, treasurer and other officers maintain their offices and headquarters in their offices in St. Louis, where telephones are maintained and the name of the company appears on the doors of said officers. Stockholders and directors meetings are held there. All certificates for the receipt of oil for transportation are sent to the St. Louis office where the revenue for said transportation is figured and entered of record. The tariff rates are also kept there and in fact the entire business of the corporation is managed and directed from the St. Louis office."

This statement is not traversed and is not susceptible of contradiction in any substantial particular. The general manager exercises final control over the business of the company in and from the St. Louis office. It is manifest not only that a very considerable part of the property of the complainant and the instrumentalities of discharging the functions of the corporation are within the State of [fol. 80] Missouri. In my opinion, this case falls within the spirit, and almost exactly within the letter, of the decision of the Supreme Court of the United States in the cases of Copper Range Company and Champion Copper Company reported in Cheney Brothers Company vs. Commonwealth of Massachusetts, 246 U. S. 147. In his opinion Mr. Justice Van Devanter made a very helpful and practical analysis of the activities which are held to constitute local business affording bases for a tax of this nature and pointed out the controlling distinctions. In my opinion, that case is decisive of this controversy under the testimony produced at the hearing.

It is significant that complainant has thought it necessary to comply with the laws of the State of Missouri applicable to corporations for pecuniary profit formed in other states and desiring to be authorized or permitted to transact business in the State of Missouri, later filing with the Secretary of State amended articles showing an increase of its capital stock and the amount of its capital employed in this state, and has received the certificate and license issued to foreign corporations, thus evidencing a purpose to do business in this state and making formal compliance with the law to that end. In its bill complainant "states that it complied with said provisions

for the reason that it desired to do an interstate business through and across the State of Missouri, and desired to exercise all the rights, powers and privileges of pipe lines incorporated in the State of Missouri, and among other things desired to have the privilege of eminent domain which is granted pipe line companies organized under the State of Missouri by Section 1791 of the Revised Statutes of 1919". It now contends that its sole purpose in taking out this license was to insure to it the exercise of the right of eminent domain, [fol. 81] which right it has exercised; but this contention narrows, and is inconsistent with the broader purpose avowed in the bill. It may also be questioned whether under the authority of Southern Ill. & Mo. Bridge Company vs. Stone, 174 Mo. 1, cited by complainant, the exercise of the right of eminent domain, under the license essential to confer the right, does not constitute doing business in this state, subjecting complainant to all the "liabilities, duties and restrictions" of domestic corporations of like character. However, it is unnecessary so to decide, because it appears that complainant has engaged in activities amounting to the doing of business in this state within the meaning of the law and under the privilege and license solicited and conferred.

It follows that the findings must be for the defendants, and that an appropriate decree may be prepared and entered. It is so ordered.

Kansas City, Missouri, March 10, 1923.

Arba S. Van Valkenburgh, District Judge.

And afterwards, to-wit, on March 26, 1923, the following proceedings were had in said cause, to-wit:

[Title omitted]

Now on this day is filed for record a decree signed by Honorable [fol. 82] Arba S. Van Valkenburgh, Judge of the United States District Court for the Western District of Missouri.

The said Decree is in words and figures as follows, to-wit:

IN THE DISTRICT COURT OF UNITED STATES FOR THE CENTRAL DIVISION OF THE WESTERN DISTRICT OF MISSOURI

[Title omitted]

DECREE—Filed March 26, 1923

This cause came on to be heard at the October Term of said Court, A. D. 1922, and was argued by counsel and was taken under advisement.

And thereafter, on this 26th day of March, 1923, the Court entered final judgment and decree, and it is hereby adjudged and decreed that the bill of plaintiff filed herein be dismissed and that defendants

recover from plaintiff their taxable costs herein, and that execution issue for same.

Arba S. Van Valkenburgh, United States District Judge.

O. K. as to form. Koerner, Fahey & Young, for Plaintiff.

[fol. 83] And afterwards, on May 29, 1923, the further proceedings were had in said cause, to-wit:

[Title omitted]

Now on this day comes the plaintiff, by its attorneys, and files its petition for appeal to the Supreme Court of the United States; and there is also filed the appeal bond, order allowing appeal and assignment of errors.

The petition for appeal, so filed as aforesaid, is in words and figures as follows, to-wit:

IN THE DISTRICT COURT OF UNITED STATES FOR THE CENTRAL DIVISION OF THE WESTERN DISTRICT OF MISSOURI

[Title omitted]

PETITION FOR APPEAL—Filed May 29, 1923

To the Honorable Arba S. Van Valkenburgh, District Judge:

The above named plaintiff, Ozark Pipe Line Corporation, feeling aggrieved by the decree rendered and entered in the above entitled cause on the 12th day of March, A. D. 1923, does hereby appeal from said decree to the Supreme Court of the United States for the reasons set forth in the Assignment of Errors filed herewith, and prays that its appeal be allowed, and that citation be issued as provided by law, and that a transcript of the record proceedings and documents upon [fols. 84 & 85] which said decree was based, duly authenticated be sent to the Supreme Court of the United States sitting at Washington, D. C., under the rules of such court in such cases made and provided.

And your petitioner further prays that the proper order relating to the required security to be required of it be made.

Koerner, Fahey & Young, Attorneys for Plaintiff.

Allowed May 29/23. Arba S. Van Valkenburgh, Judge.

IN UNITED STATES DISTRICT COURT

**BOND ON APPEAL [For \$1,000.00; filed and approved May 29, 1923;
omitted in printing]**

[fol. 86] And said Order Allowing Appeal, filed as aforesaid, is in words and figures as follows, to-wit:

**IN THE DISTRICT COURT OF THE UNITED STATES FOR THE CENTRAL
DIVISION OF THE WESTERN DISTRICT OF MISSOURI**

[Title omitted]

ORDER ALLOWING APPEAL

On motion of Koerner, Fahey & Young, appearing by Truman Post Young, Solicitors and Counsel for plaintiff, it is hereby ordered that an appeal to the Supreme Court of the United States from the decree heretofore filed and entered herein be, and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to said Supreme Court of the United States. It is further ordered that the bond on appeal be fixed at the sum of One Thousand Dollars (\$1,000.00).

Dated May 29th, 1923.

Arba S. Van Valkenburgh, District Judge.

And said Assignment of Errors, filed as aforesaid, is in words and figures as follows, to-wit:

**IN THE DISTRICT COURT OF THE UNITED STATES FOR THE CENTRAL
DIVISION OF THE WESTERN DISTRICT OF MISSOURI**

[fol. 87]

[Title omitted]

ASSIGNMENT OF ERRORS

Now comes Ozark Pipe Line Corporation, plaintiff in the above entitled cause, and files the following assignment of errors upon which it will rely upon its prosecution of the appeal in the above entitled cause from the decree made by this Honorable Court on the 12th day of March, 1923.

I

The United States District Court for the Central Division of the Western District of Missouri erred in ruling that the corporation franchise tax law of the State of Missouri referred to in plaintiff's petition, as said law has been construed by the defendants, the Attorney General of the State of Missouri, and the members of the Tax Commission of the State of Missouri, does violate the commerce clause of the Constitution of the United States, to-wit: Section 8 of Article 1 of said Constitution.

II

The court erred in ruling that under the evidence the plaintiff is doing an intra-state business within the State of Missouri and is,

therefore, subject to pay a tax under the corporation franchise tax law of said state.

III

The court erred in not ruling that under the law and the evidence the plaintiff is doing only an interstate business through and across [fol. 88] the State of Missouri and that the attempt of the State of Missouri to levy a corporation franchise tax against said plaintiff on account of said interstate business is a violation of Section 8 of Article 1 of the Constitution of the United States.

IV

The court erred in ruling that the fact that the plaintiff is authorized by its charter to engage in other business than that of interstate commerce is material, and in not ruling that the only question involved was whether as a matter of fact said corporation was engaged in any business other than that of interstate commerce.

V

The court erred in ruling that the fact that plaintiff maintains an office in the City of St. Louis and owns property in the State of Missouri, all of which is incidental to the transaction of interstate commerce, renders it subject to the corporation franchise tax of the State of Missouri, and that the maintenance of said office and the owning of such property constitutes doing intra-state business within the State of Missouri.

VI

The court erred in ruling that the fact that the plaintiff filed with the Secretary of the State of Missouri a copy of its charter and obtained a license from said state to do business in the State of Missouri, and paid the fees for said license, renders it further liable to pay the tax provided by the corporation franchise tax law of said [fol. 89] state and is evidence that said Company is doing an intra-state business within the State of Missouri.

Wherefore, the appellant prays that said decree be reversed and that said District Court for the Central Division of the Western District of Missouri be ordered to enter a decree in favor of the appellant.

Koerner, Fahey & Young, Attorneys for Appellant.

And afterwards on the same day, May 29, 1923, the further proceedings were had in said cause, to-wit:

[Title omitted]

Now on this day is issued a citation directed to Roy Monier and George M. Hagee, constituting the State Tax Commission of the State of Missouri, and Jesse W. Barrett, Attorney General of Missouri.

And said Citation is in words and figures as follows, to-wit:

CITATION AND SERVICE

The United States of America to Roy Monier and George M. Hagee, constituting the State Tax Commission of the State of Missouri, and Jesse W. Barrett, Attorney General of the State of Missouri, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at the City of Washington, thirty days from and after the day this citation bears date, pursuant to an [fol. 90] appeal filed in the Clerk's office of the District Court of the United States for the Central Division of the Western District of Missouri, wherein the Ozark Pipe Line Corporation, a corporation, appellant and you are appellees, to show cause, if any there be, why the decree rendered against said appellant as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Arba S. Van Valkenburgh, Judge of the District Court of the United States within and for the Central Division of the Western District of Missouri, this twenty-ninth day of May in the year of our Lord one thousand nine hundred and twenty-three.

Arba S. Van Valkenburgh, United States District Judge for the Central Division of the Western District of Missouri.

Service of the above citation acknowledged this 2nd day of June, 1923.

Jesse W. Barrett, Attorney General of the State of Missouri,
Attorney for Defendants, Appellees.

Received June 4, 1923. Koerner, Fahey & Young.

And afterwards, to-wit, on June 18, 1923, the further proceedings were had in said cause, to-wit:

[Title omitted]

[fol. 91] Now on this day comes the Plaintiff Appellant, by its attorneys, and files a motion for extension of time to file transcript

and there is also filed an order of court signed by Honorable Arba S. Van Valkenburgh, Judge, extending the time to file transcript.

The order filed, as aforesaid, is in words and figures as follows, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE CENTRAL DIVISION OF THE WESTERN DISTRICT OF MISSOURI

[Title omitted]

ORDER EXTENDING TIME

On motion of plaintiff appellant in the above entitled cause it is hereby ordered that the time for the preparation and filing of the record in the Supreme Court of the United States in the above entitled cause on appeal is hereby extended for a period of ninety (90) days from and after June 28, 1923.

Arba S. Van Valkenburgh, Judge

And afterwards, to-wit, on July 2nd, 1923, the further proceedings were had in said cause, to-wit:

[fol. 92]

[Title omitted]

Now on this day comes the plaintiff appellant, by its Attorneys and files a praecipe for transcript in the above entitled cause.

And said praecipe, filed as aforesaid, is in words and figures as follows, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE CENTRAL DIVISION OF THE WESTERN DISTRICT OF MISSOURI

[Title omitted]

PRÆCIPÉ FOR TRANSCRIPT OF RECORD—Filed July 2, 1923

To the Clerk of the District Court of the United States for the Western District of Missouri:

In making up the transcript of the record in the above entitled cause for the Supreme Court of the United States upon the appeal of the plaintiff therein, will you please incorporate into such transcript the following portions of the record, to-wit:

1. Petition.
2. Answer.
3. Reply.
4. Statement of the evidence.

[fol. 93] 5. All of the exhibits offered in the case, to-wit: Plaintiff's Exhibits A, B, C, and D, and Defendants' Exhibits 1 and 2.

6. Opinion of Court.
7. Decree of Court.
8. Petition for appeal.
9. Bond on appeal.
10. Order allowing appeal.
11. Assignment of errors.
12. Citation.
13. Order of Court extending time for filing transcript in Supreme Court.
14. This præcipe.

The above being a full and complete record in this case.

Koerner, Fahey & Young, Attorneys for Plaintiff Appellant.

The undersigned, attorneys for the defendants in the above entitled cause, hereby acknowledged service of a copy of the above præcipe this 16th day of June, 1923.

Jesse W. Barrett, Attorney General.

[fol. 94] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE CENTRAL DIVISION OF THE WESTERN DISTRICT OF MISSOURI

[Title omitted]

CLERK'S CERTIFICATE

I, Edwin R. Durham, Clerk of the District Court of the United States for the Western District of Missouri, hereby certify that the above and foregoing is a true copy of the original record and proceedings in the above entitled cause, as the same appear of record and on file in my office. Said record consists of the petition filed by plaintiff, answer of defendant, reply, statement of the evidence, all of the exhibits offered in the case, to-wit: (plaintiff's exhibits A, B, C, and D, and defendants' exhibits 1 and 2), opinion of court, decree of court, petition for appeal, bond on appeal, order allowing appeal, assignment of errors, citation, order of court extending time for filing transcript, and præcipe.

Witness my hand as clerk, and the seal of said Court. Done at office in Jefferson City, Missouri, this 25th August, A. D. 1923.

Edwin R. Durham, Clerk, By F. J. Fromme, Deputy. [Seal of the United States District Court of Missouri, Central Division, Western District.]

[fol. 95] STATEMENT OF COSTS [omitted in printing]

Endorsed on cover: File No. 29,885. W. Missouri D. C. U. S. Term No. 575. Ozark Pipe Line Corporation, appellant, vs. Roy Monier and George M. Hagee, constituting the State Tax Commission of the State of Missouri, and Jesse W. Barrett, Attorney General of the State of Missouri. Filed September 25, 1923. File No. 29,885.

(752)

